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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:30 a.m. April 27, 2010

First Floor Board Room
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Approve the minutes of the regular meeting on April 20, 2010

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Summer Jackson, Housing Member is also seated with the City Council.

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. CONSENT AIRPORT AGENDA

1. *Airport Concessions Disadvantaged Business Enterprise Program.

RECOMMENDED ACTION: Approve the ACDBE program.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 18A)

1. Report of Board of Bids and Contracts dated April 26, 2010.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2010</u>	<u>(Consumption on Premises)</u>
Migueul Reyes	Rostizeria Los Reyes*	512 West 21st Street North
<u>New</u>	<u>2010</u>	<u>(Consumption off Premises)</u>
Anita Haeri	Carlos LLC d/b/a Valero #2	851 South Meridian
Anita Haeri	Carlos LLC d/b/a Valero #1	1622 South West Street

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates: (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.

- a. Community Events – Special Olympics Kansas. (District I)
- b. Community Events – Rumble in Delano. (Districts IV and VI)

RECOMMENDED ACTION: Approve the request subject to: 1) hiring off-duty certified law enforcement officers as required; 2) obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and 3) Certificate of Liability Insurance on file with the Community Events Coordinator.

5. Design Services Agreement:

- a. Agreement for Design Services for Water, Sanitary Sewer, and Paving Improvements in Angel Fire Addition, north of 47th Street South, east of West Street. (District IV)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Property Acquisition:

- a. Partial Acquisition at 3131 North Hillside for the Heartland Preparedness Center Project. (District I)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

7. Minutes of Advisory Boards/Commissions

Historic Preservation Board, March 8, 2010

Library Board, March 16, 2010

RECOMMENDED ACTION: Receive and file.

8. Second Reading of Ordinances for Exchange Place Project. (District VI)

RECOMMENDED ACTION: Approve the Second Amended and Restated Development Agreement and adopt Ordinance NO. 48-728 and Ordinance No. 48-729.

9. A Resolution establishing the Order of Succession as Mayor of the City of Wichita, Kansas in the absence from the City of the Mayor and the Vice-Mayor.

RECOMMENDED ACTION: Adopt the resolution and authorize the necessary signatures.

10. CDBG Budget Modification. (Districts I and III)

RECOMMENDED ACTION: Authorize the recommended budget modification.

11. Transportation Services Agreement with Sedgwick County.

RECOMMENDED ACTION: Approve the contract and authorize the necessary signatures, and authorize any necessary budget adjustments.

12. Child Care Licensing Grant Application.

RECOMMENDED ACTION: Approve the grant application, the grant award if applicable, and authorize the necessary signatures.

13. Report of Claims for March 2010. (See Attached)

RECOMMENDED ACTION: Receive and file.

14. Century II Theatrical Rigging Contract.

RECOMMENDED ACTION: Approve the contract.

15. Century II Concert Hall Seating.

RECOMMENDED ACTION: Authorize the Purchasing Manager to enter into a contract with American Seating for an amount not to exceed \$600,000.

16. Abatement of Dangerous and Unsafe Structures. (Districts I, II, III and IV)

RECOMMENDED ACTION: Approve the proposed assessments and place the ordinances on first reading.

17. Grant Application for Kansas Emergency Shelter Grant Funds.

RECOMMENDED ACTION: Approve the application for Kansas Emergency Shelter Grant funds and authorize necessary signatures for the application and subsequent grant award.

18. Second Reading Ordinances: (First Read April 20, 2010)
a. List of second reading ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

REVISED 4/26/2010

City of Wichita
City Council Meeting
April 27, 2010

TO: Wichita Airport Authority

SUBJECT: Airport Concessions Disadvantaged Business Enterprise Program

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program.

Background: Wichita Mid-Continent Airport is classified as a primary commercial service airport and the Wichita Airport Authority receives federal funds for airport development authorized under Title 49 of the United States Codes. The Airport Authority has signed airport grant assurances obligating it to comply with 49 CFR Part 23. Therefore, the airport is required to periodically submit an Airport Concessions Disadvantaged Business Enterprise (ACDBE) program for approval by the Federal Aviation Administration (FAA). The ACDBE program only applies to concessions serving the public in the Airline Passenger Terminal, and is a separate program from the Authority's capital construction DBE program. **During the past three (3) year ACDBE goal period of FY 2007-2009, the goal was 6.93% for Non-car Rental Concessions. Achievements were an average of five percent (5%). The goal for Car Rental Concessions was zero percent (0%), and the achievement was zero (0%) percent.**

Analysis: The ACDBE program covers a three-year period from January 1, 2010 through December 31, 2012 and has been approved by the FAA in accordance with the regulations of the U.S. Department of Transportation, 49 CFR Part 23. Goals of five percent (5%) for Non-car Rental Concessions and zero percent (0%) for Car Rental Concessions were established and agreed upon by the FAA for this ACDBE program using standard federal goal-setting calculation methodology. These goals apply to the current terminal building, and due to existing concessionaire contracts, there will be no new concession opportunities during the facility's remaining life. However, prior to the new terminal opening, there will be a complete bid for all food, beverage, and retail merchandise concessions, as well as car rental concessions. Thus, future ACDBE programs and goals will be adjusted to consider those new concession opportunities.

Financial Considerations: None.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through establishing goals which provide opportunities for disadvantaged business enterprises to participate in the development of the airport's concession program, thereby creating diversity and employment which will have a positive impact on the Wichita community.

Legal Considerations: The program has been submitted to comply with federal grant assurances, and has been approved by the FAA.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the ACDBE program.

Attachment: ACDBE program and FAA approval letter.

WAA

ACDBE PROGRAM

POLICY STATEMENT

Section 23.1, 23.23

Objectives/Policy Statement

The Wichita Airport Authority (WAA) has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The WAA is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The WAA has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the WAA to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airport(s);
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

Assistant Properties & Contracts Manager has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Assistant Properties & Contracts Manager is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the WAA in its financial assistance agreements with the Department of Transportation.

WAA has disseminated this policy statement to the Wichita Airport Authority Advisory Board and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area. This policy statement shall be posted on the website, www.flywichita.com, and shall be published in the Wichita Eagle daily newspaper and distributed to the following by U.S. mail: Wichita State University Small Business Development Center, United States Small Business Administration, South Central Kansas Economic Development, Wichita Hispanic Chamber of Commerce, Kansas Black Chamber of Commerce, Urban League of the Mid-Plains, Wichita Chamber of Commerce Center for Entrepreneurship, Small Business Center, and Mid-America Minority Business Development Council.


[Signature of Sponsor's Chief Executive Officer]

Date

10/26/09

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 23.3 Definitions

The WAA will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

The Wichita Mid-Continent Airport is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

The WAA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its DBE program, the WAA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The WAA acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The WAA will include the following assurances in all concession agreements and management contracts it executes with any firm after April 21, 2005:

- (1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Section 23.11 Compliance and Enforcement

The WAA will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107).

The WAA will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or

refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

The WAA compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

Compliance reviews: The FAA may review the airport sponsor's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the airport sponsor's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by the WAA may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

The following enforcement actions apply to firms participating in the WAA's ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (b) For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude DOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
- (d) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (e) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the WAA's ACDBE program or otherwise violates applicable Federal statutes.

SUBPART B – ACDBE Programs**Section 23.21 ACDBE Program Updates**

Since the WAA is a small hub primary airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the WAA will submit its ACDBE program and overall goals to FAA according to the following schedule:

Type of Airport	Initial Program and Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1
Small Hub Primary	October 1, 2006	October 1, 2009	
Nonhub Primary	October 1, 2007	October 1, 2010	

Until our new ACDBE program is submitted and approved we will continue to implement our concessions DBE program that was in effect before April 21, 2005, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at Wichita Mid-Continent Airport. However, if applicable, we will establish separate ACDBE goals at each location.

When WAA makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: The WAA is committed to operating its ACDBE program in a nondiscriminatory manner. The WAA's Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): We have designated the following individual as our ACDBELO:

Traci Nichols
 Assistant Properties & Contracts Administrator
 2173 Air Cargo Road
 Wichita, Kansas 67209
 (316) 946-4700
tnichols@wichita.gov

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the WAA complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to Victor White, Director of Airports, concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of one to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes WAA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.
10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Uniform Certification Program in the State of Kansas.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintains the WAA's updated directory on certified ACDBEs and distinguishes them from DBEs.

Directory: The WAA through the State of Kansas Uniform Certification Program (UCP), maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The UCP updates the on-line directory once a week and reprints and mails the directory monthly. We make the Directory available as follows: 2173 Air Cargo Road, Wichita, Kansas, www.flywichita.com. The Directory may be found in Attachment 2 to this program document.

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The WAA will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities (23.25(a)). WAA will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the WAA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

The WAA will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The WAA's overall goal methodology, a description of the race-neutral measures it will take to meet the goals are described in Section 23.25 and Attachment 4 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the WAA projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Attachment 4 and 5 of this plan. (23.25(e))

The WAA will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. We will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25 (f)(g))

Section 23.27 Reporting

WAA will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Section 23.29 Compliance and Enforcement Procedures

The WAA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (see Attachment).
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to

commitments. This will be accomplished by following the procedures that have been implemented, documentation and reports will be required to be supplied on a continual basis.

4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 WAA will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein. We are a member of a Unified Certification Program (UCP) administered by Kansas Department of Transportation and Kansas Department of Transportation which will make certification decisions on behalf of the (sponsor) for ACDBEs.

The UCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

We will review the eligibility of currently certified ACDBEs to make sure that they will meet the standards of part 23. We will complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later. Also, prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. Our schedule for this review process will be submitted on an annual basis or prior to the ACDBE's expiration date.

We directed all currently certified ACDBEs to submit by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$30 million. The size standard for banks and other financial institutions is \$275 million in assets, for car rental companies it is \$40 million, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of part 23 is \$750,000. We recognize that in calculating personal net worth, the following exclusions apply: the individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm, to a maximum of \$3 million. Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged. (See 23.3 - *Personal Net Worth* definition and 23.35)

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to certify a part 26 DBE as an ACDBE if the firm does not do work relevant to our concessions program. (23.37).

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

We will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)).

We will use the Uniform Application Form as found in Attachment 7 of this program.

SUBPART D – GOALS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The WAA will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. The sponsor will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The sponsor's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 Consultation in Goal Setting

The sponsor consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting our overall goals, we will identify the stakeholders that we consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

The sponsor is a small hub primary airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1
Small Hub Primary	October 1, 2006	October 1, 2009	
Nonhub Primary	October 1, 2007	October 1, 2010	

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA for approval at least six months before executing the new concession agreement.

The WAA will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in Attachment 5 to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in Attachment 4 to this program.

Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 and 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

Concession Specific Goals (*Also include this language in the DBE goal attachment*) (23.25(c)(e)(1)(iv))

The WAA will use concession specific goals to meet any portion of the overall goals WAA does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)

We need not establish a concession specific goal on every such concession, and the size of concession specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs.)

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the WAA will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, the WAA will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv))

To be eligible to be awarded a concession that has a concession specific goal, bidders/offers must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the WAA's concession specific goals. Specifically,

Demonstration of good faith efforts (26.53(a) & (c))

The following personnel are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to

be regarded as responsible:

We will ensure that all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before we commit to the concession agreement with the bidder/offeree.

Information to be submitted (26.53(b))

WAA treats bidder/offeree's compliance with good faith effort requirements as a matter of responsibility.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 15 days of being informed by WAA that it is not responsible because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the Director of Airports who will designate the reconsideration official: Victor White, Wichita Airport Authority, 2173 Air Cargo Road, Wichita, Kansas 67209; (316) 946-4700; vwhite@wichita.gov. The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the concessionaire did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

WAA will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or

subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

In this situation, we will require the concessionaire to obtain our approval of the substitute ACDBE and to provide copies of new or amended subcontract, or documentation of good faith efforts.

If the concessionaire fails to comply, the WAA may issue a termination for default proceeding.

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the WAA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of XX percent of annual gross receipts; value of leases and/or purchases of goods and services has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.53.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55.

Section 23.61 Quotas or Set-asides

We will not use quotas or set-asides as a means of obtaining ACDBE participation.

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

We will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. We will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Section 23.75 Long-Term Exclusive Agreements

We will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a “long-term” agreement is one having a term of longer than 5 years. We understand that an “exclusive” agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place Wichita, Kansas an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring & Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Kansas State Wide Certification Program - UCP

Attachment 3

Sample Monitoring and Enforcement Mechanisms

The WAA has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to K.S.A. 44-1000, et seq.; and
3. The Code of the City of Wichita Section 2.12.950; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The WAA will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

We will insert the following provisions into concessions agreements and management contracts:

Nondiscrimination — Concessionaire agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, national origin or ancestry, disability, or age, except where age is a bona fide occupational qualification, in its operations or services being provided at the Premises, and its use or occupancy of the Premises under this Agreement. The Concessionaire agrees to comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, et seq.; the Code of the City of Wichita Section 2.12.950; and any laws, regulations or amendments as may be promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently, existing or hereafter enacted, which pertains to civil rights and equal employment opportunity.

Concession Disadvantaged Business Enterprise: If applicable, this agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR 23, Subpart F. The Airport has established an overall goal for Airport Concessions Disadvantaged Business Enterprise (ACDBE) participation in Concessions at the Airport, and is required to use good faith efforts to ensure that goal is achieved. The Airport encourages all concessionaires to maximize ACDBE participation in concession opportunities. The Airport shall have the right to count any ACDBE participation under this Agreement toward the Authority overall ACDBE concession goal.

Concessionaire's ACDBE Status: Concessionaire's ACDBE certification must be approved by the Unified Certification Program (UCP) on or before the execution date of this Agreement. A copy of the Concessionaire's current certification letter is to be submitted on or before the execution of this Agreement. Concessionaire must take all reasonable steps to maintain and keep current this ACDBE status throughout the term of this Agreement.

We will make the necessary efforts and resources to monitor and enforce concessionaires by on-site reviews of concession workplaces and frequent reviews of records.

If the concessionaire fails to comply, the WAA may issue a termination for default proceeding.

Attachment 4

Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rentals

Amount of Goal

WAA's overall goal for concessions other than car rental during the period beginning October 1, 2010 and ending September 30, 2012 is the following: 5% of the total gross receipts for concessions at Wichita Mid-Continent Airport. The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

The concession opportunities anticipated during this goal period are: Retail, Services, and Food & Beverage with estimated gross receipts revenue of \$4,472,573. The WAA has a master concessions agreement in place for the duration of this goal period. The concessionaire will fulfill the goal objectives through a subcontract. If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, WAA will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

WAA has determined that its market area is businesses and concessions doing business in the Wichita metropolitan area. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

Methodology used to Calculate Overall Goal

Goods and Services

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. We, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

Management Contract or Subcontract

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator.

Step 1: 23.51(c)

We determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

$$\text{Base figure} = \frac{1 \text{ (Ready, willing, and able non-car rental ACDBEs in the market area)}}{1,212 \text{ (All ready, willing and able non-car rental concession firms in the market area)}}$$

The data source or demonstrable evidence used to derive the numerator was from the DBE Directory and from past experience with firms that have run concessions or sought concession contracts or leases. During our outreach efforts, we have not been able to identify any ACDBE firms who are seeking contract or lease opportunities for concessions.

The data source or demonstrable evidence used to derive the denominator was the information obtained from the Census Bureau using the following codes:

4531 Florists
4542 Vending Machine Operators
7221 Full service restaurants
722211 Limited-service restaurants
722212 Cafeterias, buffets, & grill buffets
7223 Specialty food services
7224 Drinking places (alcoholic beverage)

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of: 82 %

$$1 \text{ DBE} / 1,212 \text{ Non-DBE} = .082\%$$

Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 5%.

Our overall goal for non-car rental concessions is 5%

The data used to determine the adjustment to the base figure was:

Past participation –

We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past and chosen to adjust our figure using this data. The past performance has been adjusted to include gross revenues of all concessions with the exception of car rental concessions.

<i>FISCAL YEAR</i>	<i>PAST PERFORMANCE</i>
2004	6.74%
2005	6.85%
2006	6.18%
2007	5.1%

The next step taken was to calculate the mean past performance. To do this, the past performance for fiscal year 2007 and 2008 were averaged.

$$4.9\% + 5.1\% / 2 = 5\%$$

We anticipate the next three years of estimated gross receipts for the master concessionaire and DBE subcontractor to increase slightly due to an improved concessions program.

Consultation with Stakeholders (23.43)

To solicit consultation regarding our DBE Concessions Plan, the Concessions Plan and the goal is posted on the airport's website, www.flywichita.com, and published in the Wichita Eagle daily newspaper. Interested parties are invited to comment and are provided an e-mail address for submitting comments regarding DBE availability, and the WAA efforts to solicit DBE participation. Our plan will be adjusted for comments if warranted. In addition, a copy of the Concessions Plan will be distributed to the City of Wichita Purchasing Division, and to the Wichita Airport Authority governing body.

Breakout of Estimated Race-Neutral & Race Conscious Participation
Section 23.51

WAA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The WAA uses the following race-neutral measures to increase ACDBE participation. We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
7. Assist with a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.

We estimate that, in meeting our overall goal of 5%, we will obtain 0% from race-neutral participation and 5% through race-conscious measures.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities.
2. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.
3. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 5

Section 23.45: Overall Goal Calculation for Car Rentals**Amount of Goal**

WAA's overall goal for car rentals during the period beginning October 1, 2008 and ending September 30, 2009 is the following: 0% of the total gross receipts of car rental operations at Wichita Mid-Continent Airport.

The concession opportunities anticipated during this goal period are: goods and services related to car rentals with estimated gross receipts revenue of \$18,940,000. If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, WAA will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval at least 6 months before executing the new concession agreement. (23.45(i)).

WAA has determined that its market area is Wichita metropolitan area. This is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms receive a substantial majority of concessions related revenues are located.

Methodology used to Calculate Overall Goal**Step 1: 23.51(c)**

We determined the base figure for the relative availability of car rental ACDBEs. The base figure was calculated as follows: *[the following are examples of methods you may use. You may use other methods or combinations of methods to determine the base figure, subject to FAA approval]*

Option 1:

$$\text{Base figure} = \frac{0 \text{ (Ready, willing, and able car rental ACDBEs in the market area)}}{\text{(All ready, willing and able car rental firms in the market area)}}$$

The data used to determine the adjustment to the base figure was based on the purchasing information provided by the car rental agencies and determining that there are no certified ACDBE's in the market area who provided these services.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for car rental concessions of: 0%

Step 2: 23.51(d)

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0%. Our overall goal for car rental concessions is 0%.

The data used to determine the adjustment to the base figure was based on the purchasing information provided by the car rental agencies and determining that there are no certified ACDBE's in the market area who provided these services.

Consultation with Stakeholders (23.43)

To solicit consultation regarding our DBE Concessions Plan, the goal is posted on the airport's website, www.flywichita.com, and published in the Wichita Eagle daily newspaper. Interested parties are invited to comment and are provided an e-mail address for submitting comments regarding DBE availability, and the WAA efforts to solicit DBE participation. In addition, a copy of the Concessions Plan will be distributed to the City of Wichita Purchasing Division, and to the Wichita Airport Authority governing body. Our plan will be adjusted for comments if warranted.

Breakout of Estimated Race-Neutral & Race Conscious Participation
Section 23.51

The WAA uses the following race-neutral means to increase ACDBE participation:

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
6. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
7. Assist with a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.

We estimate that, in meeting our overall goal of 0%, we will obtain 0% from race-neutral participation and 0% through race-conscious measures.

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:
We will establish concession-specific goals for particular concession opportunities

1. Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession
2. With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid/proposal specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % ACDBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the ACDBE goal of _____ %) is committed to a minimum of _____ % ACDBE utilization on this contract and submitted documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State UCP Certification Number: _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

The bidder/offeror is committed to utilizing the above-named ACDBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Civil Rights Staff
Western-Pacific Region
15000 Aviation Blvd.
Lawndale, CA 90261

April 7, 2010

Mr. Victor White, A.A.E.
Director of Airports
City of Wichita
Wichita Airport Authority
P.O. Box 9130
Wichita, Kansas

Dear Mr: White

This letter is in response to the Airport Concession Disadvantaged Business Enterprise Program for the City of Wichita Airport Authority. Based on our review, we have determined the program meets the standards in the Department of Transportation Regulation 49 CFR Part 23.

Your ACDBE goal of 5.0% non-car rental and 0% car-rental concessions is approved. This goal covers a three-year period of time from October 2009 (FY-2010) to September 2011 (FY-2011) Your next goal is due October 1, 2011 and subsequent goals are due every 3 years on October 1.

You are not required to submit regular updates to the program as long as you remain in compliance, unless you propose significant changes.

Thank you for the prompt submission of your ACDBE Program. If you should have any questions or need assistance, please contact Mr. Rudy Andrade of my staff at (310) 725-3945.

Sincerely,

for Michael Freilich
Director, Civil Rights
Western-Pacific Region and DBE Compliance

Cc: Traci Nichols

RECEIVED

APR 10 2010

W.A.A.

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL APRIL 27, 2010**

- a. Wichita River Corridor Improvements, Phase 1C (east of Arkansas River, north of Douglas) (472-84767/706994/208459) Does not affect existing traffic. (District VI) - \$2,200,000.00
- b. Lateral 534 Southwest Interceptor Sewer to serve Angel Fire Addition (north of 47th Street North, east of West Street) (468-84668/744311/480003) Does not affect existing traffic. (District IV) - \$202,000.00

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Rumble in Delano
(District IV, VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Kelsey Metzinger, Historic Delano, Inc. is coordinating with City of Wichita Staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Rumble in Delano Car Show June 5, 2010 4:00 pm – 10:00 pm

- Douglas Avenue, Sycamore to Walnut – including roundabout.

Client will arrange to remove blockades as necessary to allow emergency vehicle access during entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Special Olympics Kansas
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events Procedure, the event promoter Dave Wenz, Special Olympics Kansas is coordinating with City of Wichita Staff, subject to final approval by the City Council.

Analysis: The following temporary street closure request has been submitted:

2010 Special Olympics Summer Games Fireworks Finale, June 4, 2010, 7:00 pm – 10:00 pm
§ 21st Street North, Hillside to Yale Street, not including intersections.

Client will arrange to remove blockades as necessary to allow emergency vehicle access during entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special events.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Agreement for Design Services for Water, Sanitary Sewer, and Paving Improvements in Angel Fire Addition (north of 47th Street South, east of West Street) (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the agreement.

Background: The City Council approved the water, sanitary sewer and paving improvements in Angel Fire Addition on March 9, 2010.

Analysis: The proposed agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water, sanitary sewer and paving in Angel Fire Addition. Per Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$45,300 and will be paid by special assessments.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water, sanitary sewer and paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

ANGEL FIRE ADDITION

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90471 serving Lots 42 through 54, Block B; Lots 42 through 49, Block C; Lots 1 through 17, Block E, Angel Fire Addition (north of 47th Street South, east of West Street) (Project No. 448 90471).

LATERAL 534, SOUTHWEST INTERCEPTOR SEWER serving Lots 42 through 54, Block B; Lots 42 through 49, Block C; Lots 1 through 17, Block E, Angel Fire Addition (north of 47th Street South, east of West Street) (Project No. 468 84668).

ANGEL from the west line of the plat, east to the west line of Kessler; **KESSLER** from the north line of Lot 42, Block C, south to the south line of the plat; **KESSLER COURT** from the east line of Kessler, east to and including the cul-de-sac; **ANGEL COURT** from the north line of Angel, north to and including the cul-de-sac and that sidewalk be constructed on Angel and Kessler (north of 47th Street South, east of West Street) (Project No. 472 84886).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Angel Fire Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90471	\$ <u>6,800.00</u>
Project No. 468 84668	\$ <u>11,700.00</u>
Project No. 472 84886	\$ <u>26,800.00</u>
TOTAL	\$ <u>45,300.00</u>

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
 - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
 - 2. Additional design services not covered by the scope of this agreement.
 - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
 - 4. A major change in the scope of services for the PROJECT.
 If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

N. Brent Wooten, President

ATTEST:

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way and easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
 - a. Plan Development for the water improvements by **June 14, 2010**.
(Project No. 448 90471).
 - b. Plan Development for the sewer improvements by **June 14, 2010**.
(Project No. 468 84668).
 - c. Plan Development for the paving improvements by **June 28, 2010**.
(Project No. 472 84886).

Attachment No. 1 to Exhibit “A” – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

CITY OF WICHITA
City Council Meeting
 April 27, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition at 3131 North Hillside for the Heartland Preparedness Center Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The City of Wichita and Sedgwick County have entered into an agreement with the Federal government to develop a centralized facility for National Guard and Army Reserve use. The site is located on City owned land east of Interstate 135 and south of the Union Pacific railroad rail line. The City's commitment to the project includes development of access to the site, along with a variety of other infrastructure improvements. As part of the project, sufficient access must be provided to the site. After reviewing several alternatives, it was determined that the safest and most efficient method would be to develop a road along the south side of the railroad right of way from Hillside to the proposed site. This access can be easily controlled, does not impact the adjoining neighborhood and does not require crossing the rail corridor. Development of this access will require the acquisition of four parcels from two owners. Two of the acquisitions involve the concrete manufacturing facility at 3131 North Hillside.

Analysis: The project requires a ten-foot wide strip adjacent to the site improvements and an area of undeveloped land located to the west. The acquisitions do not directly impact the improvements. These acquisitions were appraised together having a total value of \$90,003. This includes \$89,560 for 1.23 acres of land (\$1.67 per square foot) and \$443 for the 4,573 square foot temporary easement. The owner has agreed to accept the appraised amount. The owner is currently involved in a Section 11 bankruptcy action, necessitating the approval by the bankruptcy court of any sale of assets. To facilitate this approval, the City must approve the contract prior to submission to the bankruptcy court. In the event that the bankruptcy court does not approve the transaction, an eminent domain action has been initiated on this tract.

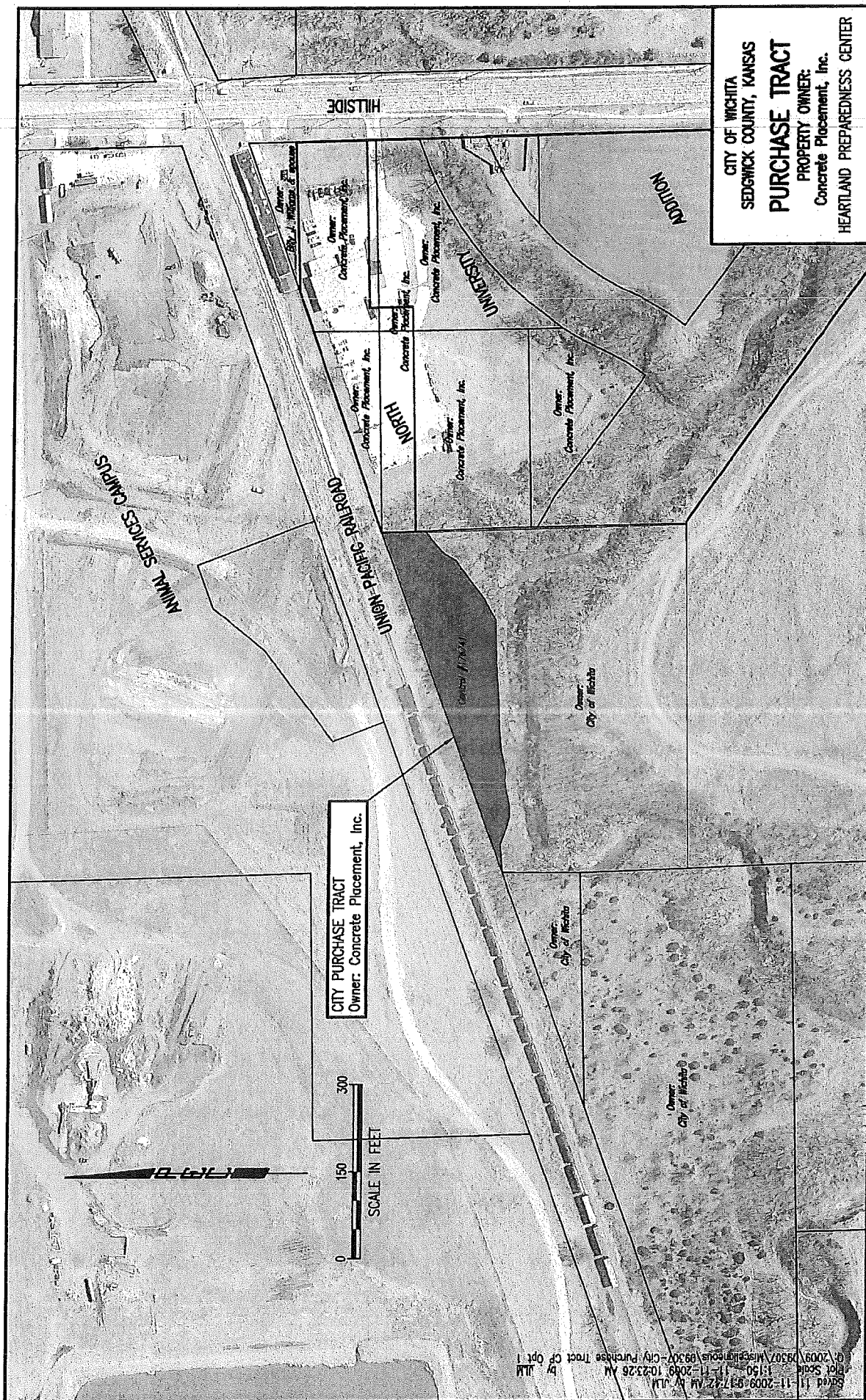
Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$93,003 is requested. This includes \$90,003 for the acquisition and \$3,000 for closing costs, title insurance and administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure by improving access to the proposed facility.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract map and real estate purchase agreement.



REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, made and entered into this _____ day of _____, 2010 by and between Brundage-Bone Concrete Pumping, Inc., party of the First Part, hereinafter referred to as "**Seller**," whether one or more, and the City of Wichita, Kansas a municipal corporation, party of the Second Part, hereinafter referred to as "**Buyer**," whether one or more.

WHEREAS, Seller owns certain parcels of land located in Wichita, Kansas depicted and described on Exhibit A attached hereto (the "**Land**");

WHEREAS, Buyer is developing a National Guard facility on property adjacent to the Land and part of such development project involves the construction of an access road parallel to the nearby Union Pacific Railroad right-of-way ("**Access Road**") to provide access from such facility to Hillside Avenue;

WHEREAS, Buyer desires to purchase portions of Seller's Land to complete development of the Access Road and the National Guard facility, and

WHEREAS, Seller desires to sell and Buyer desires to purchase that portion of the Land described in Section 1 below and depicted on Exhibit B upon the terms and conditions hereinafter set forth.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient quit claim deed (substantially in the form of Exhibit C attached hereto) ("**Deed**") the following described real property (the "**Property**"), situated in Sedgwick County, Kansas, to-wit:

BEGINNING at the northwest corner of Lot 1, Block A, North University Addition to Wichita, Sedgwick County, Kansas; Thence Bearing N71°43'12"E, along the North line of said Lot 1, a distance of 439.16 feet to a P.I. in said North line; Thence Bearing S89°41'45"E, along said North line, a distance of 31.38 feet; Thence Bearing S71°43'12"W, a distance of 472.20 feet to a point on the West line of said Lot 1; Thence Bearing N00°00'00"E, along said West line, a distance of 10.53 feet to the **POINT OF BEGINNING** and

That part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., lying north of the north mean high bank of the East Branch of Chisholm Creek, lying south of the Union Pacific Railroad (formerly Missouri Pacific Railroad) Right-of-Way and lying west of the West line of the North University Addition to Wichita, Sedgwick County, Kansas.

2. Seller does hereby agree to sell and convey to the Buyer a temporary construction easement (substantially in the form of Exhibit D attached hereto) ("**Temporary Easement**") over the following described real property, situated in Sedgwick County, Kansas, to-wit:

COMMENCING at the northwest corner of Lot 1, Block A, North University Addition to Wichita, Sedgwick County, Kansas; Thence Bearing S00°00'00"W, along the West line of said Lot 1, a distance of 10.53 feet to the **POINT OF BEGINNING**; Thence Bearing N71°43'12"E, parallel with the northerly line of said Lot 1, a distance of 472.20 feet to a point on the North line of said Lot 1; Thence Bearing S89°41'45"E, along said North line, a distance of 31.38 feet; Thence Bearing S71°43'12"W, a distance of 505.25 feet to a point on the West line of said Lot 1; Thence Bearing N00°00'00"E, along said West line, a distance of 10.53 feet to the **POINT OF BEGINNING**.

3. The Temporary Easement will provide Buyer with the additional space necessary to construct the Access Road. The term of the Temporary Easement will expire on the date that is the earlier of one year after Closing or thirty (30) days following the date construction of the Access Road is completed. Following Closing, Buyer will remove the fence currently located along the northern boundary of the Property ("**Existing Fence**") and construct a temporary fence along the southern boundary of the Temporary Easement to separate Seller's property from Buyer's construction area. Within thirty (30) days following completion of the Access Road, Buyer will remove the temporary fence and construct a permanent fence along the southern boundary of the Property of substantially equal materials as the Existing Fence ("**Permanent Fence**") and make whatever repairs and adjustments are necessary to connect the other portions of Seller's fencing on the northern and western boundaries of Seller's property to the Permanent Fence. This provision shall survive Closing and shall not be deemed to merge into the Deed.

4. Buyer is aware that a monitoring well is currently located on the Land near Seller's building as depicted on Exhibit E attached hereto. To prevent damage to the monitoring well and to ensure it can be used during and after Buyer's construction activities on the Property and within the Temporary Easement, Buyer shall fence or take other actions as necessary to protect said well the date Buyer commences such construction activities. If said monitoring well is damaged by Buyer or Buyer's agents during construction, Buyer will repair the damage to said well or relocate it to a location acceptable to Seller. This provision shall survive Closing and shall not be deemed to merge into the Deed.

5. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance of the Property and Temporary Easement to Buyer, the sum of Ninety Thousand Three Dollars and no/100 (\$90,003.00) payable to Seller by wire transfer at Closing.

6. At the Buyer's discretion, the Buyer may purchase a title insurance company's commitment to insure or a complete abstract of title certified to date, to the Property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record ("**Title Evidence**"). Buyer represents that it has reviewed the Title Evidence and did not discover any defects in title. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.

7. Buyer understands that Seller is a debtor and debtor in possession in a case pending under Chapter 11 of the Bankruptcy Code and agrees that the effectiveness of this Agreement is expressly contingent upon Seller obtaining the Bankruptcy Court's approval of the sale of the Property pursuant to the terms of this Agreement and that this Agreement shall not be binding on

Seller until the Bankruptcy Court has issued a final order approving this transaction. Following execution of this Agreement by the parties, Seller will seek the Bankruptcy Court's approval to sell the Property to Buyer. Buyer acknowledges and agrees that Seller has no control over, and shall not be liable for, the process of obtaining approval from the Bankruptcy Court and any delays related thereto. If the Bankruptcy Court does not approve the sale of the Property pursuant to this Agreement, this Agreement shall automatically terminate (except for those sections which expressly survive termination) and both parties shall be released from any further obligations hereunder.

8. A duly executed copy of this Agreement shall be delivered to the parties hereto.

9. It is further agreed by and between the parties hereto that real property taxes which are not yet due and payable shall be pro-rated for the then current tax fiscal year on the basis of 100% of real property taxes levied for the prior tax fiscal year. All prior years real property taxes shall be current at time of Closing.

10. Except as otherwise provided in this section, Seller further agrees to convey the Property with all the improvements including general landscaping and trees located thereon. Buyer shall promptly notify Seller if any utility lines or facilities which provide service to Seller's property are discovered by Buyer on the Property. To the extent that any utility line or facility which provides service to Seller's property is located on the Property, Buyer agrees to promptly relocate such utility line or facility (at Buyer's sole cost and expense) so that it is either: (a) no longer located on the Property; or (ii) is relocated to a location which is reasonably acceptable to Seller. Any relocation of utility lines or facilities by Buyer shall be completed in a manner reasonably acceptable to Seller and which otherwise complies with all rules and regulations of the applicable governing authorities. If a utility line or facility is relocated but remains on the Property, Buyer shall grant Seller an easement in, to, over, under and across such utility line or facility (ten (10) feet on each side of such utility line or facility) for the purpose of accessing, surveying, maintaining, operating, replacing, servicing, repairing and removing such utility line or facility. This provision shall survive Closing and shall not be deemed to merge into the Deed

11. Seller shall place no encumbrances on the Property during the period from execution of this contract to Closing.

12. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated ("Closing"), within ten (10) days following Seller's receipt of Bankruptcy Court approval, by means of a customary deed and money escrow ("Closing Escrow") established with Security 1st Title LLC in Wichita, Kansas. At the Closing, each party shall deliver to the other (by means of deposit into the Closing Escrow) the following: (a) Seller shall deliver to Buyer, the Deed and the Temporary Easement, duly executed and acknowledged by or on behalf of the Seller; and (b) Buyer shall deliver to Seller the purchase price as described above in Section 5. Buyer agrees and acknowledges that Closing cannot occur unless Bankruptcy Court approval is obtained by Seller as provided above in Section 7.

13. Possession of the Property will be given to Buyer at Closing.

14. Closing costs shall be paid 100% by Buyer and 0% by Seller.

15. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, BUYER AGREES TO ACCEPT THE PROPERTY ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS, WHETHER KNOWN OR UNKNOWN, AS OF THE CLOSING DATE. NO WARRANTY OR REPRESENTATION OF ANY TYPE IS MADE BY SELLER WITH RESPECT TO THE PROPERTY INCLUDING, WITHOUT LIMITATION, AS TO ANY OF THE FOLLOWING: (I) FITNESS FOR ANY PARTICULAR PURPOSE, (II) MERCHANTABILITY, (III) CONDITION, (IV) ABSENCE OF DEFECTS OR FAULTS, (V) ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (VI) FLOODING, OR (VII) COMPLIANCE WITH LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT, AS THEY MAY APPLY TO THE CURRENT CONDITION OF THE PROPERTY OR BUYER'S INTENDED DEVELOPMENT, CONSTRUCTION OR USE, OR FOR ANY OTHER PURPOSE. BUYER ACKNOWLEDGES THAT BUYER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT BUYER IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY SELLER OR ANYONE ACTING, OR CLAIMING TO ACT, BY, THROUGH OR UNDER SELLER OR ON SELLER'S BEHALF CONCERNING THE PROPERTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE INDEFINITELY ANY CLOSING OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO ANY DOCUMENTS, EXECUTED OR DELIVERED AT CLOSING.

[Signatures are on the Following Page]

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Brundage-Bone Concrete Pumping, Inc.

By:

BUYER:

By Direction of the City Council

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

APPROVED AS TO FORM:

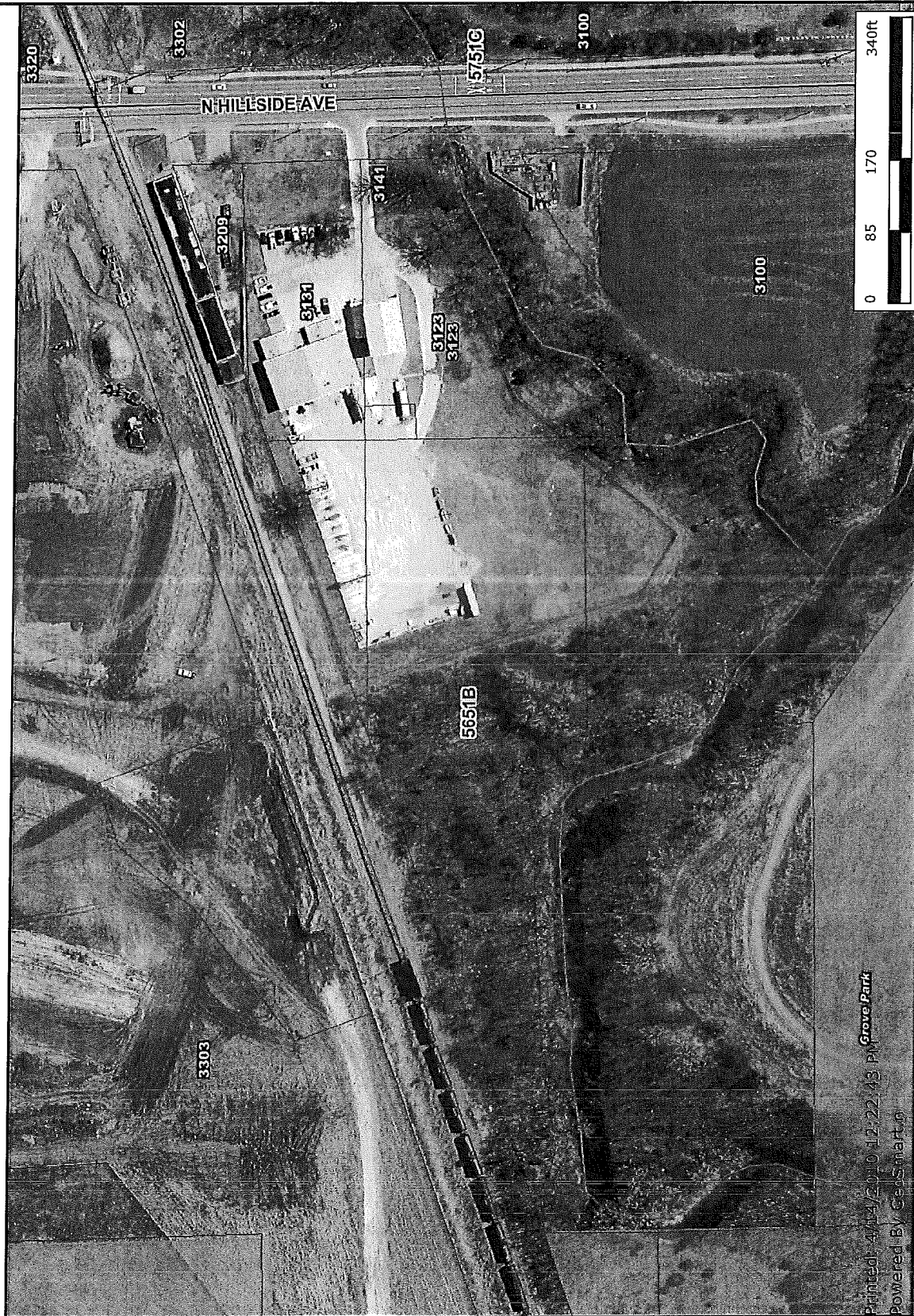
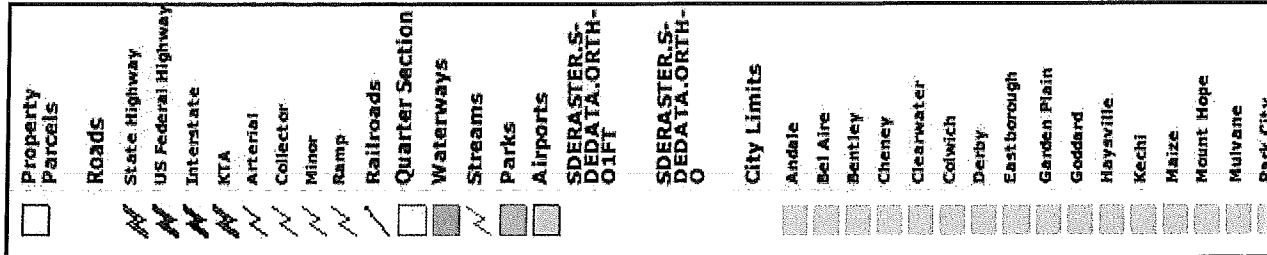
Gary E. Rebenstorf, Director of Law

EXHIBIT A

THE LAND



Brundage-Bone Ownership



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



Lot 1 and Lot 2, Block A, North University Addition to Wichita, Sedgwick County, Kansas and

That part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., lying north of the north mean high bank of the East Branch of Chisholm Creek, lying south of the Union Pacific Railroad (formerly Missouri Pacific Railroad) Right-of-Way and lying west of the West line of the North University Addition to Wichita, Sedgwick County, Kansas.

(Containing 1.137 acres, more or less)

Actual acreage subject to field surveyed determination of the "north mean high bank"

EXHIBIT B

THE PROPERTY

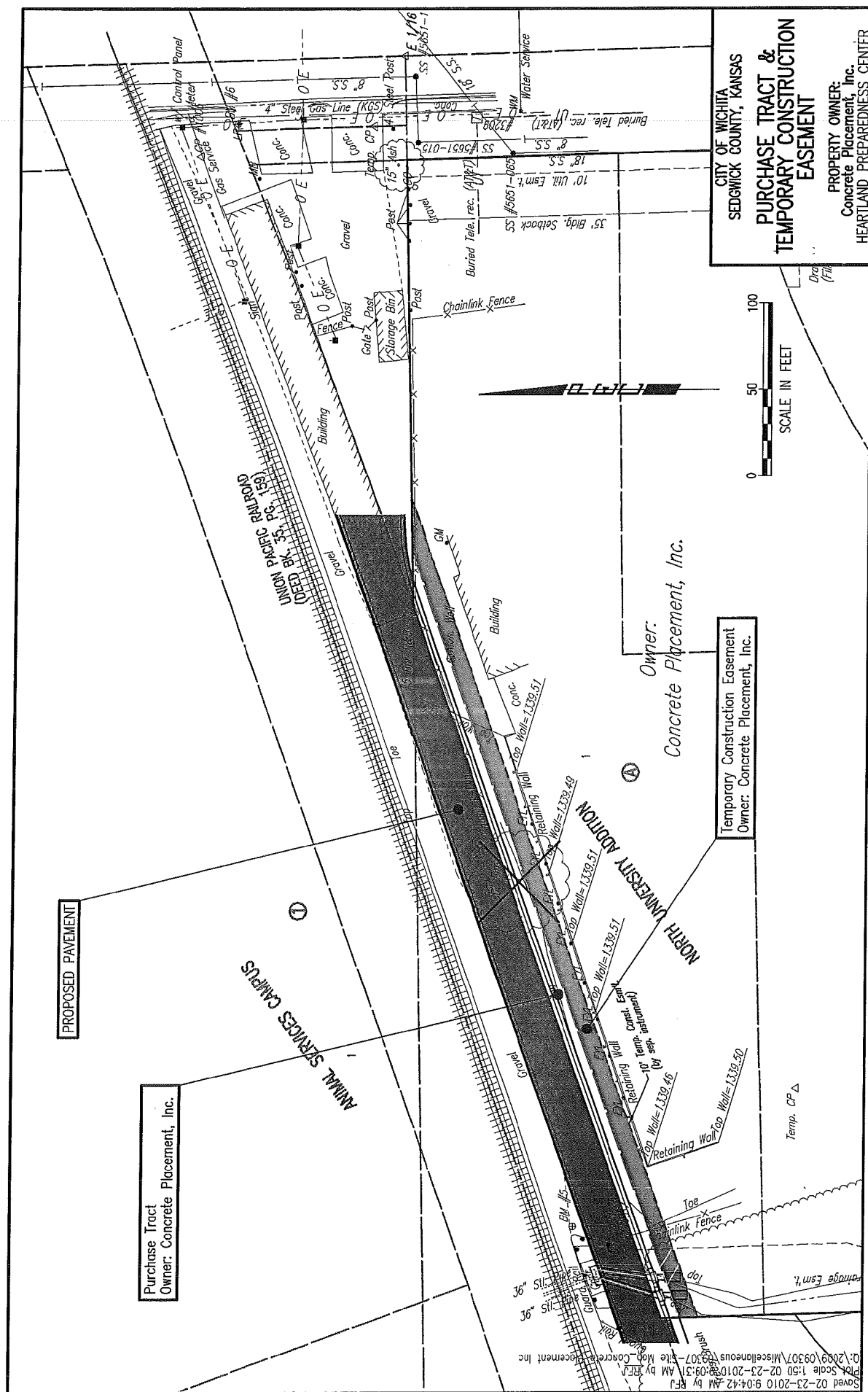


EXHIBIT C

FORM OF DEED

QUIT CLAIM DEED

THIS INDENTURE, Made this ____ day of _____, 2010, between Burdage-Bone Concrete Pumping, Inc., a Colorado corporation, party of the first part, and the City of Wichita, Kansas, a municipal corporation, party of the second part.

WITNESSETH:

That said party of the first part, in consideration of the sum of ONE DOLLAR, the receipt of which is hereby acknowledged, does by these presents, remise, release and quit claim, unto said parties of the second part, their heirs and assigns, all the following described real estate subject to easements, situated in the City of Wichita, County of Sedgwick and State of Kansas, to-wit:

BEGINNING at the northwest corner of Lot 1, Block A, North University Addition to Wichita, Sedgwick County, Kansas; Thence Bearing N71°43'12"E, along the North line of said Lot 1, a distance of 439.16 feet to a P.I. in said North line; Thence Bearing S89°41'45"E, along said North line, a distance of 31.38 feet; Thence Bearing S71°43'12"W, a distance of 472.20 feet to a point on the West line of said Lot 1; Thence Bearing N00°00'00"E, along said West line, a distance of 10.53 feet to the **POINT OF BEGINNING** and

That part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., lying north of the north mean high bank of the East Branch of Chisholm Creek, lying south of the Union Pacific Railroad (formerly Missouri Pacific Railroad) Right-of-Way and lying west of the West line of the North University Addition to Wichita, Sedgwick County, Kansas.

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, forever.

IN WITNESS WHEREOF, the said party of the first part had hereunto set its hand the day and year first above written.

Brundage-Bone Concrete Pumping, Inc.

By:

STATE OF KANSAS)
) ss:
_____ COUNTY)

This instrument was acknowledged, before me this _____ day of _____ 2010, by _____.

SEAL

Notary Public

My Commission Expires: _____

EXHIBIT D

TEMPORARY EASEMENT

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this ____ day of _____, 2010, by and between Brundage-Bone Concrete Pumping, Inc. (“**BBCP**”), party of the first part, and the City of Wichita, Kansas, a Municipal Corporation (“**City**”), party of the second part.

WITNESSETH: That BBCP, in consideration of the sum of One Dollar and No Cents (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the City, a temporary right-of-way for the purpose of constructing, maintaining, and repairing an access road on the City’s property and a fence along the property line between BBCP’s and the City’s properties, the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

COMMENCING at the northwest corner of Lot 1, Block A, North University Addition to Wichita, Sedgwick County, Kansas; Thence Bearing S00°00’00”W, along the West line of said Lot 1, a distance of 10.53 feet to the **POINT OF BEGINNING**; Thence Bearing N71°43’12”E, parallel with the northerly line of said Lot 1, a distance of 472.20 feet to a point on the North line of said Lot 1; Thence Bearing S89°41’45”E, along said North line, a distance of 31.38 feet; Thence Bearing S71°43’12”W, a distance of 505.25 feet to a point on the West line of said Lot 1; Thence Bearing N00°00’00”E, along said West line, a distance of 10.53 feet to the **POINT OF BEGINNING**. (Said 10’ temporary construction easement containing 0.112 acres, more or less) (“**Easement Area**”).

A depiction of the Easement Area is attached as Exhibit A.

And the City, its heirs and assigns is hereby granted the right to enter upon the Easement Area at any time for the purpose of constructing, maintaining, and repairing the access road and fencing improvements described above from the date this Easement is executed until the date it expires. The City agrees that upon commencement of construction of the portion of the access road which requires use of the Easement Area, the City will diligently work to complete such construction in a manner that minimizes the impact on BBCP’s property adjacent to the Easement Area and the amount of time the Easement Area is used. This temporary Easement shall expire automatically on the date that is thirty (30) days following the end of construction of the access road and fence or two (2) years from execution of this Easement, whichever comes first.

The City agrees to indemnify, protect, defend and hold BBCP and its affiliates, partners, trustees, beneficiaries, directors, shareholders, members, managers, officers, employees, advisors and other agents (collectively, the “**Indemnified Parties**”) harmless from and against any and all liabilities, claims, losses, damages, costs and expense (including, without limitation reasonable attorneys fees and court costs and litigation expenses) suffered or incurred by any of the Indemnified Parties as a result of or in connection with any activities of the City (including, without limitation, activities of any of the City’s employees, consultants, contractors or other agents) on, at or relating to the Easement Area and the construction of the improvements described above by or on behalf of the City on the land adjacent to the Easement Area, including, without limitation, mechanics’ liens, damage to property (including, without limitation, the

Easement Area), injury to persons or property resulting from such activities in connection therewith. If the Easement Area is disturbed or altered in any way as a result of such activities, the City shall, at its sole cost and expense, restore the Easement Area (prior to the expiration of this Easement) to substantially its condition existing prior to the commencement of such activities which disturbed or altered the Easement Area. Furthermore, the City agrees to cause any of its representatives or agents conducting any activities on the Easement Area to maintain and have in effect commercial general liability insurance (i) with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for personal injury, including bodily injury and death, and property damage, (ii) which names BBCP as an additional insured, and (iii) which provides for a waiver of subrogation. The City, upon BBCP's request, shall deliver to BBCP a copy of the certificate or certificates of insurance effectuating the insurance required hereunder prior to the commencement of activities on the Easement Area which certificate or certificates shall provide that such insurance shall not be terminated or modified without at least thirty (30) days' prior written notice to BBCP except upon termination of this easement as hereinabove described.

IN WITNESS WHEREOF: BBCP has signed these presents the day and year first written.

BRUNDAGE-BONE CONCRETE PUMPING, INC.

By: _____
Name: _____
Its: _____

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on ____ day of _____, 2010 by ____
_____ of _____.

Notary Public

My Commission Expires: _____

EXHIBIT A

Easement Area

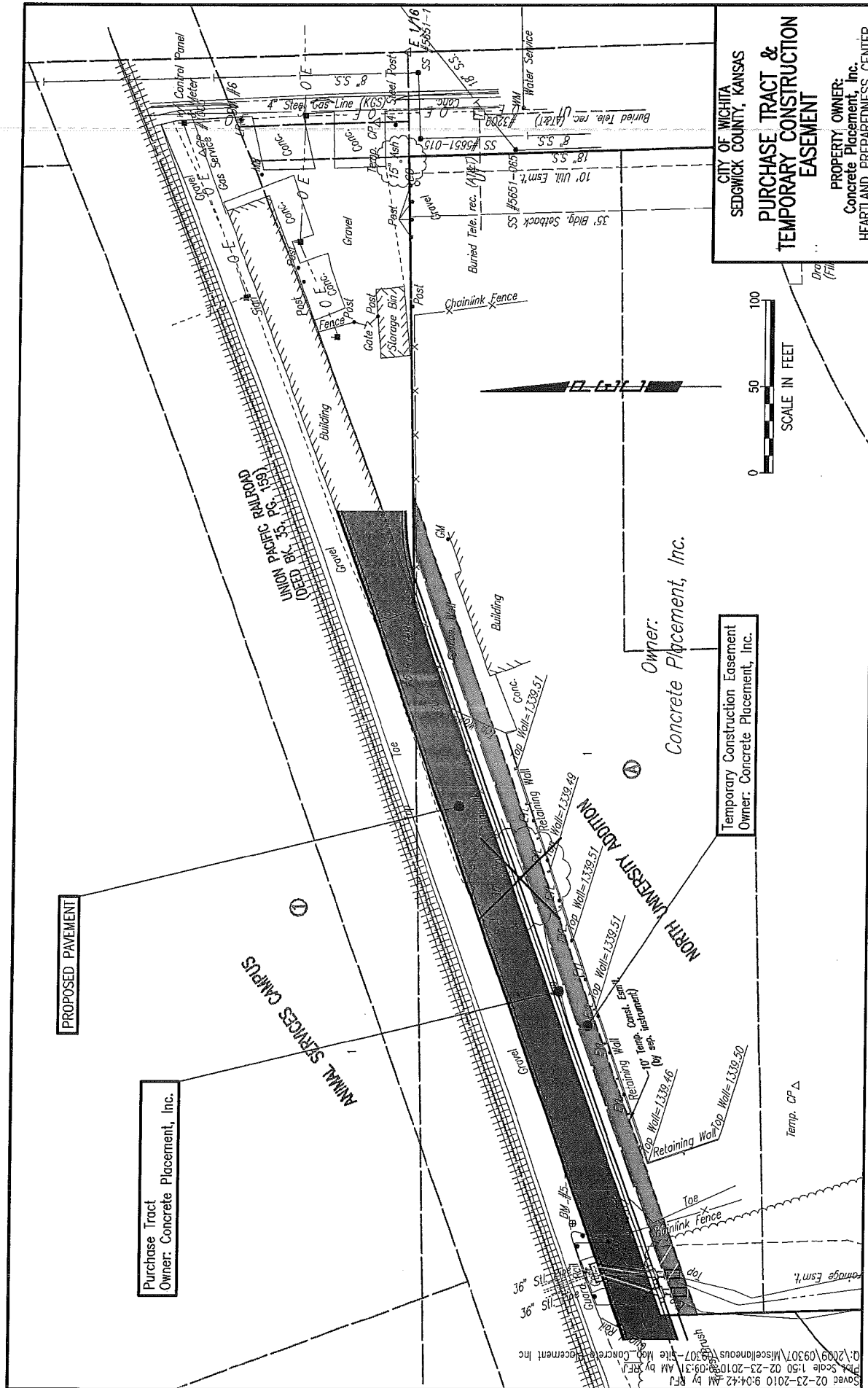
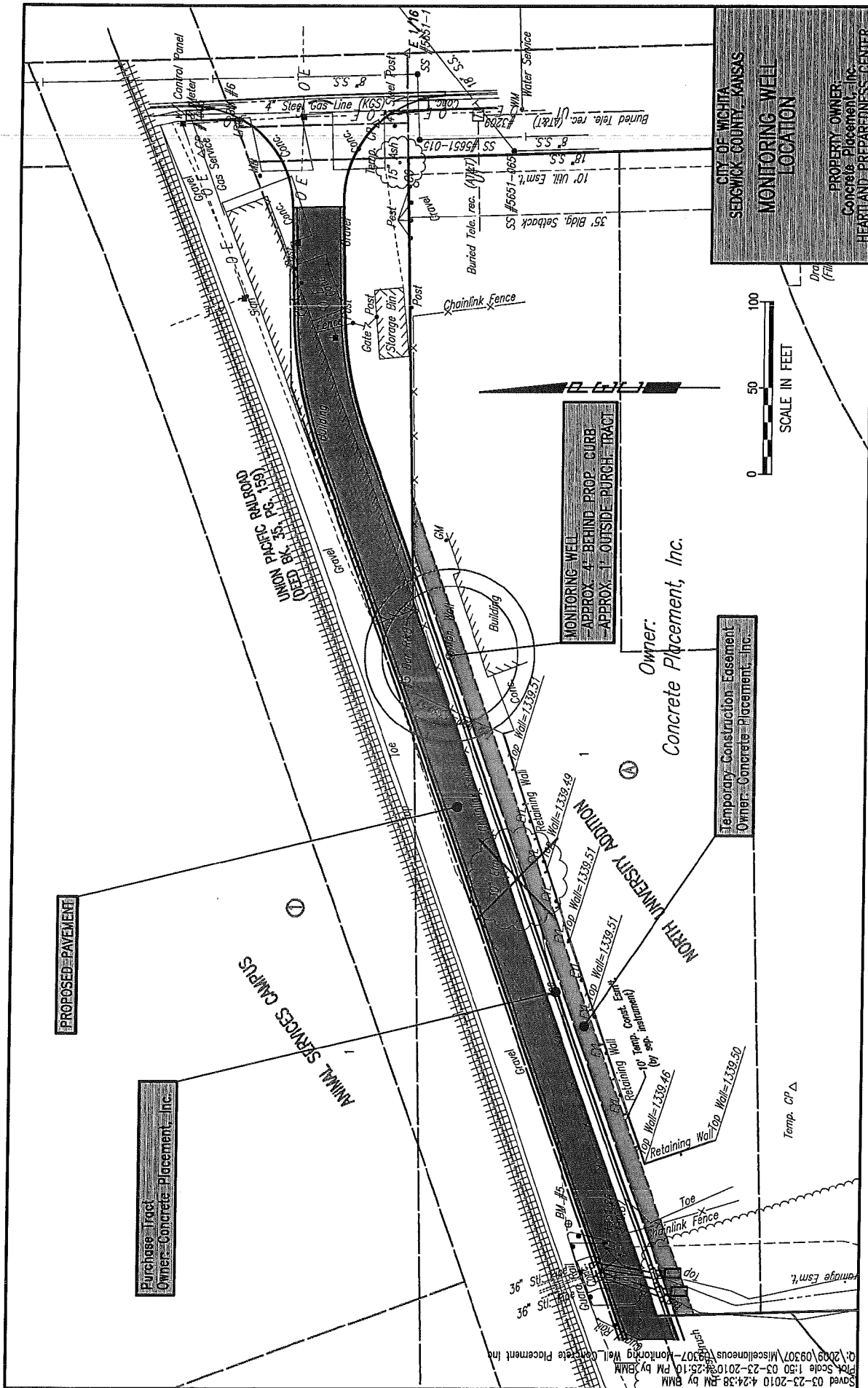


EXHIBIT E

MONITORING WELL



City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Second Reading of Ordinances for Exchange Place Project (District VI)

INITIATED BY: Office of Urban Development

AGENDA: Consent Agenda

Recommendation: Adopt the Ordinances on second reading and approve the Development Agreement.

Background: On April 20, 2010, the City Council tentatively approved a Second Amended and Restated Development Agreement for the Exchange Place Project, that includes a City contribution to the project in an amount not-to-exceed \$10,300,000, and placed on first reading an Ordinance authorizing a Second Amendment to the Exchange Place Project Plan for tax increment financing (TIF) and an Ordinance authorizing the issuance of general obligation bonds of the City to finance the City's contribution to the project, all subject to certain conditions described below and to making conforming changes to the aforementioned documents prior to second reading of the ordinances.

Analysis: The approved amount of Exchange Place project costs is \$10,300,000. All attached documents have been changed to conform to this amount. The total amount of TIF bonding that is authorized is \$11,270,000 which includes City financing and project management costs in addition to the \$10,300,000 in direct project costs.

The City Council motion to approve the increased TIF amount included the following conditions:

- That the refinancing of the Wichita Executive Center be completed and all current creditors be paid prior to any City funding of the project.
- That City funds be disbursed through arrangements approved by HUD that ensure payments are made directly to contractors.
- That the "burn-off" of the TIF Shortfall Guaranty be eliminated.
- That personal guarantees of David Lundberg and Michael Elzufon be added as requirement.

The attached Second Amended and Restated Development Agreement includes as Section 2.4 certain "conditions precedent" to any disbursement of City funds. Section 2.4.2 requires that all existing indebtedness on the Wichita Executive Center be refinanced as a "conditions precedent" and Section 2.4.3 requires personal guarantees from Messrs. Lundberg and Elzufon that covers any TIF shortfall for city bonds issued to fund project costs in excess of \$9,300,000.

Section 8 of the Amended and Restated Development Agreement contains the actual TIF Shortfall Guaranty provisions. The original Development Agreement included a "burn-off" provision that terminated the guaranty if the total appraised value of the Exchange Place property reached a certain amount. This provision has been completely removed.

Section 3.3 of the Amended and Restated Development Agreement contains the provisions for disbursement of City funds to pay for parking garage costs. This provision has been altered to conform to the disbursement procedures dictated by the requirements of the HUD 221d4 loan guarantee program. This requires developers to submit draw requests on HUD forms to the HUD lender who, following review and inspection of work, will then disburse funds through a title company directly to contractors, etc. The City will receive separate documentation of work completed on the parking garage and will have

20 days to review the draw documentation and forward funds to the HUD lender.

Financial Considerations: The financing structure for the new project amount calls for the issuance of full faith and credit TIF bonds, which are paid by TIF revenues generated by the property within the TIF district but are additionally secured by the City's general credit. The attached bonding ordinance will authorize the approved amount to be bonded, as approved by City Council. The par amount of TIF bonds includes project costs plus construction period interest, financing costs and project management costs.

Goal Impact: Economic Vitality and Affordable Living, Quality of Life, Core Area and Neighborhood. Redevelopment of blighted and declining areas is needed to avoid economic stagnation. Business prospects and workers seeking to relocate are attracted to cities with vibrant downtowns.

Legal Considerations: State law requires amendment of the district plan or the project plan if a substantial change to the project is proposed which materially changes either plan. The attached ordinance, amendment to the TIF project plan, amended bonding ordinance and amended and restated development agreement have been reviewed by the Department of Law and approved as to form.

Adoption of the ordinance approving project plan amendments requires a two-thirds majority vote of the City Council. Under City Council policy, when ordinances are adopted by second reading on the consent agenda, Council Members' votes on first reading are repeated on second reading, unless the item is pulled for separate vote.

Recommendations/Actions: It is recommended that the City Council approve the Second Amended and Restated Development Agreement and adopt Ordinance No. 48-728 and Ordinance No. 48-729, and authorize necessary signatures.

Attachments: Second Amended and Restated Development Agreement
Ordinance No. 48-728 Amending Exchange Place Project Plan
Ordinance No. 48-729 Authorizing TIF Bonds

04/20/2010

SECOND
AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
REGARDING DEVELOPMENT
OF
THE EXCHANGE PLACE BUILDING,
MICHIGAN BUILDING
BITTING BUILDING
AND
PARKING GARAGE

CITY OF WICHITA, KANSAS
AND
EXCHANGE PLACE, LLC

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EXHIBITS

A	Site Plans
B	Development Budget
C	Development Schedule
D	Development Concept
E	Schedule of Tax Projections
F	Legal Descriptions – Project Land
G	Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements
H	Exchange Place Project Taxable Properties (Legal Descriptions and Common Building Names)

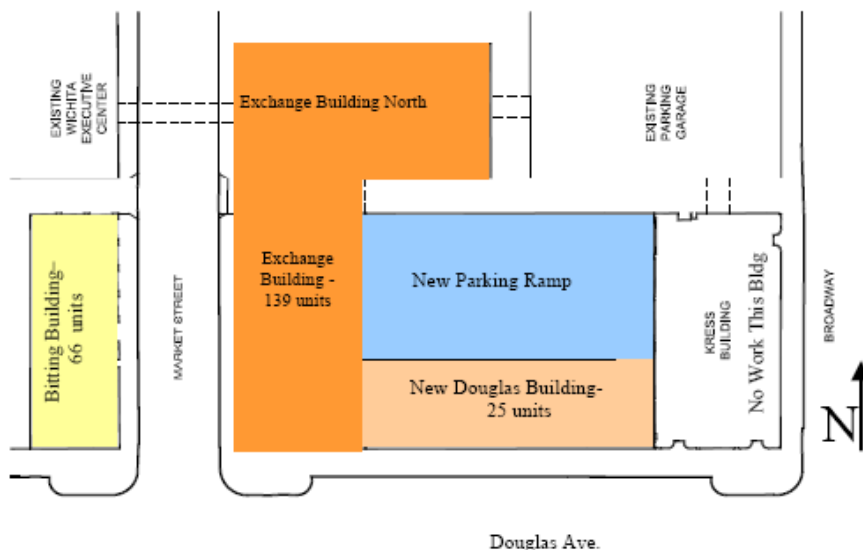
**SECOND AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
for
THE EXCHANGE PLACE BUILDING
MICHIGAN BUILDING
BITTING BUILDING
AND
PARKING GARAGE**

THIS AGREEMENT is made Effective April 20, 2010 between the **City of Wichita**, a corporate body politic and political subdivision of the State of Kansas (the "**City**"), and **Exchange Place, LLC**, a Kansas limited liability company ("**Developer**"). It amends and restates the Development Agreement for the Exchange Place Building, Michigan Building and Parking Garage dated July, 2007 and Amended and Restated December 16, 2008.

Summary

This Agreement concerns plans to renovate the North side of the 200 block of East Douglas and the Northwest Corner of Douglas and Market. Exchange Place Building (110 N. Market) the Bitting Building (107 N. Market) and the new Douglas Building will be converted into a residential and commercial complex.

The Project complex consists of 230 residential units on upper levels, retail on the first floors and a new 273 stall parking garage. The garage will serve the apartments at Exchange and Douglas buildings, retail businesses and adjacent office buildings. The new 6 story parking garage structure will be constructed immediately east of the Exchange Place Building (212 E. Douglas) and immediately North of the new Douglas Building. A new 25 unit apartment building will be constructed on Douglas immediately east of the Exchange Place Building (212 E. Douglas) on three levels (2-4) with retail space below on first floor. It will adjoin the south end of the new garage (210 E Douglas).



Overall, the Project will provide:

- 139 residential apartments at Exchange Place Building.
- 66 residential apartments at the Bitting Building.
- 25 residential units at the new construction Douglas Building.
- approximately 16,000 square feet of street level retail space.
- approximately 273 parking spaces providing an effective inventory capable of handling 273 vehicles overnight and another 175 + spaces for daily users. A minimum of 209 spaces will be allocated for use by the apartments. The remaining 64 spaces will be for public parking.
- 14 parking spaces behind the Exchange Place Building.

This work with the apartments, the retail space, and the Parking Garage is collectively described as the Project.

Background and Recitals

The following Background and Recitals contain merely an overview of the Project and are not intended to fully describe the obligations of the City and Developer. The specific terms and obligations are more fully set forth in the Agreement itself.

- (i) The City will assist financing part of the Project through tax increment financing of the Parking Garage and certain of the costs related to the Exchange Place, Bitting and Michigan Buildings as allowable by state law.
- (iii) Developer will develop the Exchange Place Building, Bitting Building and Douglas Building according to the Development Plan.
- (iv) Developer will cause the Parking Garage to be constructed according to the Development Plan.
- (v) The Michigan Building will be completely removed.
- (vi) Developer will own the Exchange Place Building, the Bitting Building, the Douglas Building, Parking Garage and the apartments located in all of these buildings.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

Section 1

Definitions and Exhibits

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used with an initial capital letter, shall have the following meaning:

"Agreement" means this Development Agreement.

"Bitting Building" means the Bitting Building located at the northwest corner of Douglas and Market in Wichita, Kansas, with a legal description given on Exhibit F.

"City" means the City of Wichita, a corporate body politic, and whenever this Agreement requires "approval of the City" or words of similar intent, such approval must come from the City Council, except as otherwise expressly provided herein.

"City Contribution" means the sum of not to exceed Ten Million Three Hundred Thousand Dollars (\$10,300,000) which the City shall fund for the City Improvement Expenditure, the City Sidewalk Expenditure and the City Parking Garage Expenditure.

"City Council" means the City Council of the City of Wichita.

"City Improvement Expenditure" means the sum of not to exceed Three Million Three Hundred, Twenty Five Thousand Dollars (\$3,325,000) which the City shall fund in part for reimbursement of land acquisition, demolition, site preparation and such other "redevelopment project costs" as defined and permitted under K.S.A. 12-1770a, as amended. This amount may be reduced in order to not exceed the total City Contribution.

"City Sidewalk Improvement Expenditure" means the sum of not to exceed Sixty Thousand Dollars (\$60,000) which the City shall fund in part for reimbursement of sidewalk repair and/or replacement along Douglas and Market adjacent to the "Exchange Place Building", the "Bitting Building" and the new "Douglas Building" as defined and permitted under K.S.A. 12-1770a, as amended. This amount may be reduced in order to not exceed the total City Contribution.

"City Skybridge Improvement Expenditure" means the sum of not to exceed Two Hundred Seventy Thousand, Four Hundred, Seventy Six Dollars (\$270,476) which the City shall fund in part for reimbursement of Repairs to the structure and exterior finishes of the elevated public walkway over Market Street that is attached to the "Exchange Place Building" as defined and permitted under K.S.A. 12-1770a, as amended. This amount may be reduced in order to not exceed the total City Contribution.

"City Parking Garage Expenditure" means the sum of not to exceed Seven Million, Eight Hundred One Thousand, Five Hundred Fifty Seven Dollars (\$7,801,557) which the City shall fund to develop and construct the Parking Garage. This amount may be reduced in order to not exceed the total City Contribution.

"City Representative" means the City Manager of the City or his or her designee. The City Representative shall have full power and authority to implement the decisions of the City Council and to act on behalf of the City in the exercise of its rights and responsibilities under this Agreement. Developer may rely on the decisions and direction of the City Representative as the directions of the City; provided, however, if any action requires an amendment to this Agreement, it shall require the approval of the City.

"Completed" or **"Completion"** means, with respect to the Project when: (a) the Project Architect certifies in writing to the City and Developer that the construction of the Project is substantially completed in accordance with the Development Plan to permit use of the Project for the purposes for which it was intended, and (b) a conditional or final occupancy permit has been issued, which date may precede the full completion of all punch-list items, and nonessential landscaping and similar design and development functions.

"Contractors" means the General Contractor and all other contractors, subcontractors, suppliers, persons, or entities that are engaged for construction or to provide labor, materials, supplies, or services of any kind in regard to the Project.

"Developer" means Exchange Place, LLC, a Kansas limited liability company (or its affiliate with the approval of the City Representative).

"Developer Improvement Contribution" means the sum of at least Thirty Four Million Eight Hundred Thousand Dollars (\$34,800,000) in equity funds and Loan proceeds that Developer shall make available to develop and construct the residential and commercial space as described in the Project and as set forth in the Development Budget.

"Development Budget" means a budget or budgets, including modifications of the budget(s), for the total cost of development and construction of the Project, including design, development, financing, construction, furnishing, fixturing, landscaping, hardscaping, equipping and pre-opening, as approved by the City and attached as Exhibit B.

"Development Concept" means the Development Concept attached as Exhibit D.

"Development Plan" means the Site Plan, drawings and specifications, Development Schedule, and Development Budget for the Project as approved by the City and Developer at the time of execution of this Agreement and as the same are amended by Developer with the approval of City Representative from time to time. The Parties anticipate that the Development Plan will be amended from time to time to reflect changes in market conditions and economic demands and that such changes are within the scope and intent of this Agreement, so long as the changes are consistent with the original Development Concept. To the fullest extent permitted by applicable law and ordinance, the City Representative is authorized to approve Development Plan changes consistent with the Development Concept.

"Development Schedule" means the development schedule for the Project attached as Exhibit C.

“Douglas Building” means a newly constructed building located between the Exchange Place Building and the Kress Building on Douglas Avenue in Wichita, Kansas, with a legal description given on Exhibit F.

“Exchange Place” means the apartments and street level retail space to be constructed and owned by the Developer, located in the Exchange Place Building, the Bitting Building, and the Douglas Building.

“Exchange Place Building” means the Exchange Place Building located at the northeast corner of Douglas and Market in Wichita, Kansas, with a legal description given on Exhibit F.

“Exchange Place Project Taxable Properties” means those properties described on Exhibit H which shall be considered for purposes of determining the incremental property tax valuation.

"Force Majeure" means war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, Acts of God or other cause or contingency similarly beyond control of the Party whose performance is affected thereby, but shall not include weather delays caused by rain, snow, or the like, or Project cost increases due to unforeseen conditions or price increases, or the like.

"General Contractor" means the general contractor(s) for the Exchange Place Building, Bitting Building and the General Contractor for the Parking Garage, as the case may be, to be selected by Developer.

“Kress Building” means the building currently located at the Northwest corner of Douglas and Broadway with a street address of 100 N. Broadway.

"Loan" means a loan from a lender(s) to Developer in an amount sufficient to allow Developer to complete the Developer Improvement Contribution pledging some or all of the Project Land and improvements.

“Loan Commitment” means a Letter of Invitation or other written loan commitment given to Developer from H.U.D. (The United States Department of Housing and Urban Development) or other lender on terms acceptable to Developer and in an amount sufficient to allow Developer to complete the Developer Improvement Contribution.

"Michigan Building" means the property commonly known by that name and located at 206 East Douglas, Wichita, Kansas, with a legal description given on Exhibit F.

“Parking Facilities” means and consists of two combined areas: the new 273 space Parking Garage and the existing 14 parking spaces located at the north area of Exchange Place Building. Collectively, the Parking Facilities will contain approximately 287 parking spaces.

"Parking Garage" means a multilevel parking facility of approximately 273 parking spaces to be constructed by Developer on the 200 block of East Douglas, east of the Exchange Place Building and west of the Kress Building, with a legal description given on Exhibit F.

"Parties" means, collectively, the City and Developer; **"Party"** means either of the Parties.

"Project" means plans to renovate the Exchange Place Building and the Bitting Building into a residential and commercial complex, and construction of a new residential building and Parking Garage on the same block east of the Exchange Place Building and west of the Kress Building. Overall, the Project will provide:

- 139 residential apartments at Exchange Place Building.
- 66 residential apartments at the Bitting Building.
- 25 residential apartments at the Douglas Building.
- approximately 16,000 square feet of street level retail space.
- approximately 273 parking spaces providing an effective inventory capable of handling 273 vehicles overnight and another 175+ spaces for daily users. A minimum of 209 spaces will be allocated for use by the apartments. The remaining spaces will be for public parking.
- 14 parking spaces behind the Exchange Place Building.

"Project Architect" means the architect for the Project, to be selected by the Developer.

"Project Land" means the tracts or parcels of land upon which the Exchange Place Building, Bitting Building, Douglas Building, and Parking Garage site are located, described on Exhibit F, together with all rights, privileges, licenses and easements appurtenant to such tracts.

"Site Plans" means the elevation, drawings and plans depicting the appearance of the Project attached as Exhibit A.

"Specialists and Consultants" means the Project Architect and the Contractors, together with other planning, architectural, engineering, interior design and other specialists and consultants selected by the Developer for the design and construction of the Project.

"Tax Increment Shortfall" means the amount equal to the difference between the amounts actually paid to the City by the Sedgwick County Treasurer as incremental property taxes collected for the Center City South Redevelopment District or Exchange Place Project Taxable Properties, as the case may be, pursuant to K.S.A. 12-1770 *et seq.*, and the amount projected to be paid by the City as debt service on the City's tax increment financing bonds as set forth in Exhibit E, commencing the first year in which a payment is due on the City tax increment financing bonds issued to finance the City's costs hereunder. The attached Exhibit E is an example and will be replaced with an Exhibit E reflecting the actual interest rates and debt service after the bonds are sold.

1.2 Other Definitions. In addition to the terms defined in Section 1.1, other terms will have the definitions provided elsewhere in this Agreement.

1.3 Exhibits. The exhibits identified in this Agreement and attached to it, or otherwise identified by the signing or initialing of the Parties, are incorporated by reference and made a part of this Agreement as though they were fully set forth in the text of this Agreement.

Section 2

Project

2.1 Project. Developer shall provide the Developer Improvement Contribution, and shall provide all services, equipment, materials, supplies, labor, and every article of any kind necessary or appropriate for the planning, development, construction, and furnishing of the Project, including those needed or appropriate for opening of the Project for business, all in accordance with the Development Plan. Developer shall be an independent contractor for all purposes, and nothing contained in this Agreement nor any actions of the Parties shall be construed to create a partnership, joint venture, or agency relationship between the City and Developer. No one performing work on the Project under the direction of Developer, or under the direction of any of the Contractors, shall be deemed to be an employee of the City for any reason or purpose whatsoever.

2.2 Funding of Project Land Acquisition. The City will pay an amount up to the \$3,325,000 amount established as the City Improvement Expenditure to the Developer for related acquisition and other expenses authorized by K.S.A. 12-1770a and in compliance with applicable law upon satisfaction of environmental and title requirements and delivery of the documents in Section 3.1.1 below.

2.3 Project Use. Subject to applicable statutory requirements, Developer may convert and sell some or all of the apartments into condominiums at some point in the future. Any such sale might include a sale of the Parking Facilities to the condominium owners.

2.4 Conditions Precedent to Project. The following matters shall be completed prior to disbursement of any City Improvement Expenditure.

2.4.1 Developer shall provide satisfactory evidence to the City Representative that Developer has (i) secured adequate commitment for HUD funding by meeting line item requirement of Section J, #15(c), Total Settlement Requirements of the HUD 92013; (ii) escrowed cash or line of credit amount required for owner under the aforesaid HUD funding; and (iii) secured a written commitment or commitments for a loan, in an aggregate amount at least equal to the difference between the Loan Commitment for HUD funding and the \$34.8 Million amount of the Developer Improvement Contribution.

2.4.2 Developer shall deliver to the City Representative documentation acceptable to the City showing that all outstanding indebtedness encumbering the Wichita Executive Center has been refinanced and all creditors with claims relating to said property have been paid in full.

2.4.3 The City Representative shall receive fully executed Guaranty Agreements from Michael Elzufon and David Lundberg, relating to the Tax Increment Financing Guaranty as set forth in Section 8 below, that covers Tax Increment Shortfall for city bonds issued to fund Project costs in excess of \$9,300,000.

Section 3 **Construction Phase**

3.1 Conditions Precedent to Construction. The following matters shall be completed before construction begins on the Project.

3.1.1 Delivery of Documents. The documents listed below (or copies), as well as any other documents reasonably required prior to commencement of construction, have been delivered to the City Representative. When necessary, Developer shall also procure the requisite filings of such documents with the appropriate officials:

- (a) Construction permit and all other permits required before commencement of construction;
- (b) Policies or certificate(s) of insurance evidencing that Developer has procured all insurance required by this Agreement;
- (c) Satisfactory evidence to City Representative that the General Contractor selected by Developer to construct the Project is a registered contractor in good standing under the laws of Kansas and the laws of its state of its domicile;
- (d) The Development Budget;
- (e) The Development Plan;
- (f) Performance and labor and material payment bonds as required by City's Charter Ordinance No. 203, dated September 19, 2006;
- (g) Executed copies of the construction contract between Developer and the General Contractor, and the contract between the Developer and the Project Architect;
- (h) Such other documentation including plans and specifications, schematic drawings and renderings of the Project as may reasonably be requested by the City Representative to insure the orderly development of the Project;
- (i) Path of schedule for the Project agreed upon by Developer and the City Representative;
- (j) All approvals from the Historic Preservation Board and all similar approvals needed for development of the Project have been obtained in writing; and
- (k) Developer and the City Representative have provided each other with their respective written waivers of their rights to cancel this Agreement under Section 9.20.

3.1.2 Closing. Developer closing on acquisition of the Exchange Place Building, Bitting Building and the site for the location of the Parking Garage.

3.2 Construction. Developer will cause commencement of construction of the Project to begin promptly upon completion of the conditions in Section 3.1.1 and 3.1.2 and receipt of the acquisition costs pursuant to Section 2.2, and Developer will pursue Completion of construction with due diligence thereafter. During construction Developer agrees to the following conditions and instructions (where applicable, to the respective parts of the Project):

- (a) To cause construction of the Project in a workmanlike manner, free of any material defects, in accordance with the final plans and specifications, and in accordance with all applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws);
- (b) To obtain all utility permits, certificates of occupancy, and all other licenses, permits and easements required for the operation of the Project;
- (c) Supervise the timely and efficient performance of the Contractors and the Specialists and Consultants under their respective contracts with Developer to enable them to perform their work in a timely, safe, professional and workmanlike manner.
- (d) To utilize an invitation and selection procedure for selecting the General Contractor for the Parking Garage acceptable to the City.

3.3 Disbursements for Parking Garage. The City shall disburse an amount up to the amount established as the City Parking Garage Expenditure, not to exceed the City Contribution amount, for the statutorily eligible construction costs of the Parking Garage incurred by the Developer in accordance with the construction contract for the Parking Garage (the “qualified costs”), subject to the additional requirements set forth herein.

As a condition of the disbursement, the Developer or the Developer’s representative shall submit a Master Contractor’s Requisition (HUD Form 92448) and Owner’s Draw Form (HUD Form 92403) attesting to the incurrence of qualified costs in accordance with the procedures outlined herein below.

- (a) A separate Contractor’s Requisition (HUD Form 92448) shall be prepared for the Parking Garage construction draws which shall be submitted to the City Representative for review and payment.
- (b) The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a request is submitted, to examine the Developer’s and others’ records relating to all costs to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

The City shall have twenty (20) calendar days after receipt of any request hereunder to review and respond to any such request by written notice to the Developer. If the submitted documentation demonstrates that: (a) the costs included in the request are qualified costs, (b) the costs were incurred, and (c) Developer is not in material default under this Agreement, then the City shall process the request in accordance with established fiscal and accounting procedures of the City, approve the request and make, or cause to be made, the disbursement within twenty (20) days after submittal. Disbursements shall be made directly to Developer's lender or the lender's disbursement agent for direct disbursement to contractors and subcontractors pursuant to HUD regulations. If the City disapproves the request, the City shall notify the Developer in writing of the reason for such disapproval within such twenty (20) day period after receipt of a request for payment, and the reason for disapproval must be stated. Only disputed amounts shall be withheld from any pay request.

Section 4 **Additional Rights and Obligations**

4.1 Approvals. Whenever this Agreement requires the consent or approval of the City Representative, the City Representative, in his or her sole discretion, may instead present the question to the City Council for the necessary consent or approval. Notwithstanding the foregoing, the Parties intend that City Council approval shall not be required or necessary for changes in the Development Plan which do not affect the City's expenditures and are consistent with the Development Concept, unless otherwise required by law.

4.2 Title to Property. Developer shall own the improvements and the Project Land in fee simple, free and clear of all liens and encumbrances, subject only to: liens and encumbrances placed thereon by Developer and real estate taxes and special assessments.

4.3 Related Improvements. Developer may construct related improvements, such as landscaping and streetscaping, and the City Representative will coordinate and cooperate with Developer to accommodate those improvements within the Project schedule.

4.4 Development Assistance. The City will provide development assistance to Developer, as needed, to facilitate and expedite the issuance of building permits and compliance with other City-controlled requirements relating to completion of the Project.

4.5 Access to Site. The City will provide reasonable access to Developer for staging and work areas adjacent to the Project Land. Toward this end, the City will cooperate with Developer to close streets under established City procedure during agreed periods of demolition and construction.

4.6 Certificate and Release. Upon proper application by Developer, the City will issue a certificate and release to Developer in regard to the Gilbert and Mosley groundwater contamination in accordance with the customary process for application and issuance of those certificates.

4.7 Use of Parking Garage. A minimum of 64 parking spaces shall be set aside in the Parking Garage for public parking and the balance for the exclusive use of the residents and guests of Exchange Place Building and Douglas Building. This allocation can be revised by Developer as market experience may demonstrate a need to reallocate parking spaces with consent of the City Representative (which consent shall not be unreasonably withheld or delayed).

Section 5

Insurance, Bonding, and Indemnification

5.1 Types of Coverage. Developer shall carry, or cause the General Contractor to carry, the following insurance coverage insuring Developer, General Contractor, and City through final completion (as defined in the construction contracts):

- (a) Special or builder's "all risk" insurance (including theft, vandalism, boiler, and pressure vessel coverage), in an amount reasonably acceptable to the City representative, insuring Developer's and City's interests in the Project and any and all furniture, equipment, supplies and other property owned, leased, held or possessed by Developer or City in the Project (insurance shall also insure against loss from collapse of any part of the building or other structural failure during construction);
- (b) Comprehensive general liability insurance insuring Developer and City against all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Developer, City, and their respective agents, contractors, or employees, in connection with the design and construction of the Project, in the amount of not less than Five Hundred Thousand Dollars (\$500,000) or in such other amounts as may be reasonably acceptable to Developer and the City, provided, however, such policies shall not name the City, or insure the City, for an amount of coverage in excess of the City's maximum liability pursuant to the Kansas Tort Claims Act and amendments (and any similar law limiting the liability of the City);
- (c) Workers' compensation insurance;
- (d) Performance and labor and material payment bonds for the General Contractor as required by City Charter Ordinance No. 203;
- (e) Automobile insurance (if applicable) with per occurrence limits of not less than \$500,000; and
- (f) All other insurance as required by law.

5.2 Policy Requirements. The following general requirements shall apply to all insurance coverage carried by Developer and General Contractor pursuant to Section 5.1:

- (a) To the extent available, each policy shall contain a clause whereby the insurer waives all rights of subrogation against General Contractor, Developer, and City, as the case may be;

- (b) Subject to the limitations on general liability insurance in Section 5.1(b), the City shall be named as its interests appear in all policies obtained by Developer and General Contractor;
- (c) Such policies shall be with reputable insurance companies reasonably acceptable to Developer, City, and General Contractor and licensed to do business in Kansas;
- (d) Developer shall provide the City Representative with policies or certificates of insurance evidencing such coverage prior to the start of construction;
- (e) Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be provided by Developer to the City Representative; and
- (f) The policies must be non-cancelable unless the carrier provides to the City Representative thirty (30) days' prior written notice of cancellation.

5.3 Indemnification. Developer agrees to indemnify, hold harmless, and defend City and members of the City Council, officers, agents, and employees (collectively referred to as the "**City Indemnified Parties**") from and against all loss, damage, liability, cost or expense including, but not limited to, attorneys' fees and court costs incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of Developer, its officers, directors, agents, or employees, or the accuracy or incompleteness of information furnished by these persons to the City.

The City's liability for any claims asserted by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of the City, its officers, directors, agents, or employees, shall be governed by the Kansas Tort Claims Act and other applicable laws of the State of Kansas.

Section 6

Term and Survival

The term of this Agreement shall commence upon the date of this Agreement and, unless terminated sooner as provided in this Agreement, shall end on the date that all of the following have occurred: the City Improvement Expenditure and City Parking Garage Expenditure have been contributed to Developer or otherwise paid; the Project is Completed; and the Project is open to the public. However, the following provisions of this Agreement shall survive beyond the end of the term: all representations and warranties; all agreements of indemnification; all obligations of conveyance of title; parking allocations under Section 4.7; tax increment shortfall guaranty in Section 8; limitations on assignment under Section 9.16; and limitations concerning the Cash Basis and Budget Laws.

Section 7
Representations, Warranties, and Guaranties

7.1 City. The City warrants and represents to Developer as follows:

- (a) It is a municipality and political subdivision of the State of Kansas, duly incorporated and validly existing under the laws of the State of Kansas.
- (b) To the best of its knowledge, it has full power and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the limitations expressed herein or otherwise imposed by law.
- (c) Neither the execution and delivery of this Agreement and the other documents contemplated herein nor the making of the City Improvement Expenditure or City Parking Garage Expenditure will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.

7.2 Developer. The Developer warrants and represents to City as follows:

- (a) It is a limited liability company duly organized, validly existing, and in good standing under the laws of Kansas.
- (b) It has the requisite power through Michael Elzufon to execute the documents under this Agreement and to consummate the transactions contemplated thereby.
- (c) Neither the execution and delivery of the documents on its part, nor the making of the Developer Improvement Contribution, nor the construction of the Project will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.
- (d) It is duly authorized and registered to carry on business in Kansas pursuant to the laws of Kansas.
- (e) Before commencement of construction, Developer will have examined the Project Land, the Exchange Place Building and the Bitting Building and made all other investigations it deems necessary to perform its duties under this Agreement and satisfy itself that there exists no condition on or about the Project Land or said buildings that would materially hinder or prohibit development of the Project as described in the Development Plan. The warranty under this subparagraph (e) does not restrict Developer's right to cancel this Agreement as provided in Section 9.20.

- (f) All contracts with Contractors shall warrant that the work performed or material supplied by that Contractor to the Project will be free from any defects in materials and workmanship for a period of at least one (1) year from the date of Completion, and that such warranty does not restrict or otherwise limit that Contractor's obligation to construct the Project in a workmanlike manner and in accordance with the Development Plan as it pertains to that Contractor's work.
- (g) It shall use reasonable care to insure that all Specialists and Consultants selected in connection with the design and construction of the Project shall be highly qualified to do the work they are engaged to perform and Developer shall make reasonable inquiries as to such persons' background, experience and reputation to assure they are well qualified to undertake such work.

Section 8

Tax Increment Shortfall Guaranty

Developer agrees to pay the City any annual Tax Increment Shortfall amount for the Exchange Place Project Taxable Properties as provided in this Section 8, but shall not be responsible for such shortfall if there is no Tax Increment Shortfall for the Center City South Redevelopment District, nor for any amount of a Tax Increment Shortfall for the Exchange Place Project Taxable Properties in excess of the amount necessary to eliminate the Tax Increment Shortfall for the Center City South Redevelopment District. Annual Tax Increment Shortfall payments may be paid to the City in two installments, with the first installment equal to one-half the annual Tax Increment Shortfall amount payable within 90 days of receiving written notice and documentation that there is a Tax Increment Shortfall. The balance of the annual Tax Increment Shortfall amount shall be paid within 180 days of receipt of notice.

Developer further agrees to make a good faith effort to meet with the Sedgwick County Appraiser prior to May 1st each year to provide the Appraiser with such detailed financial and operating information on all buildings and condominiums comprising the Exchange Place Project Taxable Properties, as needed to assist the Appraiser in determining the fair market value of said buildings and condominiums.

Section 9

General Provisions

9.1 Governing Law. This Agreement and the legal relations between the Parties shall be governed by, construed and interpreted under the laws of the State of Kansas, and exclusive venue for all disputes and litigation shall be in Wichita, Kansas only.

9.2 No Waiver. No failure of a Party to exercise any power given under this Agreement or to insist upon strict compliance of another Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms of this Agreement.

9.3 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect.

9.4 Written Amendments. Any amendment to this Agreement shall not be binding on any of the Parties unless the amendment is in writing, is duly authorized, and is duly executed by the Parties to this Agreement.

9.5 Time of Essence. Time is of the essence of this Agreement.

9.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

9.7 Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

9.8 Notices. All notices required to be given under this Agreement shall be delivered in writing and delivered either by (a) hand delivery, and considered delivered upon receipt, (b) telefacsimile, and considered delivered upon completion of transmittal, (c) certified mail, and considered delivered upon signed receipt or refusal to accept notice, or (d) nationally-recognized overnight delivery service, and considered delivered the next business day after the notice is deposited with that service for delivery. For notice purposes, the Parties agree to keep each other informed at all times of their current addresses. For purposes of notices or other written communications, the addresses of the Parties shall be as follows:

(a) If to the City:

City Manager
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4519
and

City Clerk
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
and

City Attorney
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4335

(b) If to Developer:

Michael Elzufon, Manager
Exchange Place, LLC
2735 Cheshire Lane
Plymouth, MN 55447
Fax # (763) 235-3130
and
Adams Jones Law Firm, P.A.
Attn: Mert Buckley
1635 N. Waterfront Parkway #200
Wichita, KS 67206
Fax # (316) 265-9719

9.9 Nondiscrimination and Equal Economic Opportunity. The Parties covenant and agree that in the performance of their duties and obligations under this Agreement and any other document, instrument, or agreement in connection with the transactions contemplated by this Agreement, neither of the Parties, nor their respective agents, employees, officers, directors, consultants, contractors or subcontractors, will discriminate against any applicant for employment or employee because of race, color, religion, sex, national origin, age, handicapped or disability status, or veterans status. The Parties agree to adhere to the City's standard contracting requirements as they relate to Nondiscrimination and Equal Employment Opportunity as set forth in Exhibit G.

9.10 Severability. If any clause or provision of this Agreement is or becomes invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected by such invalidity or unenforceability, and the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

9.11 Licenses and Permits. It shall be the ultimate responsibility of Developer to secure all local licenses and permits required to be obtained by Developer or City with respect to construction, completion and occupancy of the Project, including any necessary building, occupancy, sewer and utility permits. The City shall cooperate with Developer and all Contractors to the extent permitted by law in connection with the issuance of these licenses and permits.

9.12 Documents. All as-built drawings, plans, specifications, and other documents prepared for the Project pursuant to this Agreement shall become or remain the property of Developer whether or not the Project is Completed.

9.13 Approvals. Whenever the approval or consent of a Party is required in this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

9.14 "Including." Whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the words "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

9.15 Binding Effect. Subject to the limitations of Section 9.16, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

9.16 Assignment. Except as provided herein, no Party may assign all or any part of its interest in this Agreement without the prior written consent of the other Parties, and any such assignment without such consent shall be void. The City may assign all or part of its interest to a city-established entity without approval of the other Parties so long as such assignee has the legal authority to fulfill the City's obligations under this Agreement and, to the extent that it does not have such authority, the assignment shall continue in effect but the City will remain obligated for such nonassignable or unauthorized obligations. Members of the Developer may pledge their membership interests in the Developer entity to the lender holding the primary Loan on the Project if so required by such lender. Developer may transfer membership interests to other parties without the consent of the City; provided however, no such transfer may occur unless Michael Elzufon remains the manager of the Developer and unless Michael Elzufon and David Lundberg retain at least a 25% ownership interest in the Developer, either individually or collectively and either personally or through ownership in an entity that is a member of the Developer.

9.17 Brokerage Commissions. Except as noted below, both parties represent to the other that they have not discussed this Agreement or the subject matter thereof with any real estate broker, agent or salesperson so as to create any legal right in any such broker, agent or salesperson to claim a real estate commission or similar fee with respect to the transactions contemplated by this Agreement. Both Parties hereby indemnify the other Party against and agree to hold the other harmless from any and all claims, suits, or judgments (including, without limitation, court costs and attorneys' fees incurred in connection with any such claims, suits or judgments) for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the transactions contemplated by this Agreement.

9.18 Cash Basis and Budget Laws. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"). Therefore, notwithstanding anything to the contrary herein contained, the City's obligations under this Agreement are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law.

9.19 Other Agreements. The Parties also covenant to negotiate and execute such additional documents as may be reasonably necessary to provide for the coordinated construction and operation of the Project.

9.20 Cancellation. In addition to other cancellation provisions under this Agreement, this Agreement may be cancelled by Developer before reimbursement of costs for acquisition of the Project Land if:

- < the improvements to the Project contemplated by this Agreement cannot be made within the Development Budget; or

< Developer is unable to obtain financing and equity sufficient to make the Developer Improvement Contribution.

If Developer cancels this Agreement under the terms of this Section 9.20, then the Parties will pay their own expenses incurred to date, without seeking compensation from each other, and they shall have no further obligations toward each other.

9.21 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

9.22 Force Majeure. If an act of Force Majeure so damages the Project that it cannot be Completed within the Development Budget, then either Party may terminate this Agreement by giving written notice to the other. In that event, the Parties will pay their own respective costs and expenses incurred and thereafter have no further obligation to Complete construction and development of the Project.

CITY:
City of Wichita

DEVELOPER:
Exchange Place, LLC

By: _____
Carl Brewer, Mayor

By: _____
Michael Elzufon, Manager

Attest: _____
Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, City Attorney

EXHIBIT A

Site Plans

EXHIBIT B

Development Budget:

Sources and Uses of Funds per HUD Form 92013

EXHIBIT C

Development Schedule

EXHIBIT D

Development Concept March 24, 2010

The Project consists of two major components: (1) creation of 230 residential units and retail space in the downtown core by renovation of the Exchange Place Building and the Bitting Building and construction of a new Douglas Building and (2) construction of a new 273 stall Parking Garage.

Residential Units and Retail. The Exchange Place Building and the Bitting Buildings are located on the Northeast and Northwest corners of East Douglas and Market. The new Douglas Building will be located east of the Exchange Place Building. They will be converted and constructed into a residential and commercial complex which the Developer will convert and sell as condominiums. Any such sale might include a sale of the Parking Facilities to the condominium owners. Overall, the Project will provide:

- 230 residential apartments; and
- Approximately 16,000 square feet of street level retail space.

The collective apartments for all three buildings will be called Exchange Place apartments. Retail space will be located on the ground floor and serve occupants of the buildings as well as enhancing the availability of services for other workers and residents in the Downtown core area. Construction will begin after closing of the construction loan, and is anticipated to begin in the 3rd quarter of 2010 and be completed in eighteen months with an estimated cost of improvements of not less than \$34,000,000.

Parking Facilities. Developer will construct a multilevel Parking Garage on the 200 block of East Douglas, west of the Kress Building and north / behind the new Douglas Building to contain 273 parking spaces. Additional parking spaces (14) will be located behind (north of) the Exchange Place Building. These two facilities are collectively described as the Parking Facilities and will contain approximately 287 parking spaces. And, because of the automated system in the Parking Garage, can provide parking for over 500 residential and retail/office users. A minimum of 64 of these spaces will be available for daily and monthly public use. Construction is anticipated to begin in the 3rd quarter of 2010 and be complete in the 2nd quarter of 2011 at an estimated cost of approximately \$7,801,557 which the City will fund up to the amount available under the City Contribution.

Compatible Facing. The Douglas Avenue sides of The Exchange Place Building/ and the Douglas Building will be designed to have compatible facing. The Project's exterior facades have already been reviewed and approved by the City's Historic Preservation Board. Plans will also be submitted for review by the Design Council.



EXHIBIT E

Projected Debt Service Schedule City of Wichita, Kansas – Tax Increment Financing Bonds

City of Wichita, Kansas
Center City South Redevelopment District
Exchange Place Project

Annual Period Ending (1)	Principal (2)	G.O. Taxable Rate (3)	Interest (4)	P&I (5)	Projected Revenue Available (7)	Annual Balance (8)	Cumulative Balance (9)
9/1/2011					52,338	52,338	52,338
9/1/2012	-	5.50%	-	-	82,906	82,906	135,245
9/1/2013	-	5.50%	-	-	229,345	229,345	364,589
9/1/2014	150,000	5.50%	311,300	461,300	393,656	(67,644)	296,945
9/1/2015	80,000	5.50%	614,350	694,350	856,569	162,219	459,164
9/1/2016	430,000	5.50%	609,950	1,039,950	1,249,042	209,092	668,256
9/1/2017	635,000	5.50%	586,300	1,221,300	1,457,237	235,937	904,193
9/1/2018	695,000	5.50%	551,375	1,246,375	1,479,755	233,380	1,137,574
9/1/2019	750,000	5.50%	513,150	1,263,150	1,502,253	239,103	1,376,677
9/1/2020	815,000	5.50%	471,900	1,286,900	1,524,730	237,830	1,614,507
9/1/2021	880,000	5.50%	427,075	1,307,075	1,547,186	240,111	1,854,618
9/1/2022	950,000	5.50%	378,675	1,328,675	1,569,619	240,944	2,095,562
9/1/2023	1,020,000	5.50%	326,425	1,346,425	1,592,031	245,606	2,341,168
9/1/2024	1,095,000	5.50%	270,325	1,365,325	1,614,419	249,094	2,590,262
9/1/2025	1,175,000	5.50%	210,100	1,385,100	1,636,785	251,685	2,841,947
9/1/2026	1,270,000	5.50%	145,475	1,415,475	1,674,374	258,899	3,100,846
9/1/2027	1,375,000	5.50%	75,625	1,450,625	1,712,704	262,079	3,362,924
	11,320,000		5,492,025	16,812,025	20,174,949	3,362,924	

Total Project Cost	\$ 10,300,000
- Note Interest & Finance Costs	\$ 820,000
- City Project Management Costs (1.5%)	\$ 154,500
TIF Bond Amount (Rounded up to nearest \$5,000)	\$ 11,270,000

EXHIBIT F

Legal Descriptions – Project Land (General legal descriptions to be finalized prior to conveyance)

Exchange Place Building

Lot 110 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 112 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 114 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lots 14 and 16, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the West 70 1/10 feet of the North Half of the East and West alley adjoining said Lot 14 on the South.

Lot 18 and the South 0.20 feet of Lot 20, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Bitting Building

East 20½ Feet of Lot 106 and all of Lot 108 on Douglas Avenue, in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

Michigan Building

Lot 116 and the West one Foot of Lot 118, on Douglas Avenue in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Parking Garage Douglas Building-200 block of East Douglas, West of the Kress Building

Lot 118, except the West one Foot and all of Lot 120 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, AND a tract described as follows: Beginning 175 feet East from the Monument on Market Street on the North side of Douglas Avenue, said point being on the West side of alley; thence West 3 feet 1½ inches; thence North 130 Feet to the alley; thence East 3 Feet 1½ inches to alley; thence South 130 Feet to the place of beginning.

Lots 122, 124, and 126 on Douglas Avenue in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

EXHIBIT G

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination --

Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT H

Legal Descriptions and Common Building Names for Properties in Exchange Place Project Taxable Properties

Exchange Place Building

Lot 110 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 112 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 114 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North. **[Developer's seller in process of acquiring remaining fractional ownership interest or 25/48th of Lot 114.]**

Lots 14 and 16, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the West 70 1/10 feet of the North Half of the East and West alley adjoining said Lot 14 on the South.

Lot 18 and the South 0.20 feet of Lot 20, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Michigan Building

Lot 116 & West 1 Ft Lot 118 on Douglas Avenue in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Kress Energy Center

Lots 128, 130, 132 on Douglas Avenue in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Bitting Building

East 20 1/2 Ft of Lot 106, all of Lot 108 on Douglas Avenue in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Broadway Plaza Building

Common areas & facilities of Broadway Plaza condominium being odd Lots 133-135 on Douglas Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 1, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 2, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 3, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 4, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 5, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 6, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 7, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 8, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 9, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 10, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 11, Broadway Plaza Condominium & 1/11th und. int. in common areas & facilities situated on Lots 133 & 135 Douglas Ave, in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Sutton Place Building

Common areas & facilities of Sutton Place condominium situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 1, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 2, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 3, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 4, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 5, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 6, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas

Unit 7, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 8, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 9, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 10, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 11, Sutton Place Condominium & 8.33% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit 12, Sutton Place Condominium & 8.34% und. int. in common area & facilities appurtenant thereto being situated on Lots 14, 16 and 18 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Petroleum Building

Common areas & facilities of Petroleum Building condominium situated on Lots 28, 30, 32, 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #1, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #2, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #3, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #4, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #5A, Petroleum Building Condominium & 20.86% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #5B, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #6, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #7, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Unit #8, Petroleum Building Condominium & 9.89% und. interest in common areas & facilities situated on even Lots 28 thru 34 on Broadway Avenue in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Kaufman Building

Lots 20, 22, 24 on Market Street in Greiffenstein's Addition, Wichita, Sedgwick County, Kansas.

Workforce Alliance Building

Lots 32, 34, 36, 38, 40, 42, 44, 46 & 48 on Main Street in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

SC Telcom Building

Lots 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 & 35 on Market Street in Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas.

Parking Garage-200 block of East Douglas, West of the Kress Building

Lot 118, except the West one Foot and all of Lot 120 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, AND a tract described as follows: Beginning 175 feet East from the Monument on Market Street on the North side of Douglas Avenue, said point being on the West side of alley; thence West 3 feet 1½ inches; thence North 130 Feet to the alley; thence East 3 Feet 1½ inches to alley; thence South 130 Feet to the place of beginning.

Lots 122, 124, and 126 on Douglas Avenue in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

PUBLISHED IN THE WICHITA EAGLE ON _____

ORDINANCE NO. 48-728

**AN ORDINANCE ADOPTING A SECOND AMENDMENT TO THE PROJECT
PLAN FOR THE EXCHANGE PLACE PROJECT
IN THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT**

WHEREAS, by Ordinance No. 47-475 adopted May 8, 2007, the City of Wichita established a redevelopment district pursuant to K.S.A. 12-1770 et. seq., as amended, known as the Center City South Redevelopment District; and

WHEREAS, by Ordinance No. 47-526 adopted July 24, 2007, the City of Wichita has adopted a Project Plan for the Center City South Redevelopment District, and has transmitted documentation for said adoption in accordance with K.S.A. 12-1776; and

WHEREAS, the Project Plan specifies that the aggregate amount of total project costs eligible for Tax Increment Financing pursuant to State Statute is Six Million, Five Hundred Eighty Thousand Dollars (\$6,580,000.00) (the “Eligible Project Costs”); and

WHEREAS, by Ordinance 48-150 adopted January 6, 2009, City of Wichita has adopted a First Amendment to the Project Plan for the Center City South Redevelopment District, and has transmitted documentation for said adoption in accordance with K.S.A. 12-1776; and

WHEREAS, the Amended Project Plan increases the aggregate amount of total project costs eligible for Tax Increment Financing pursuant to State Statute to Ten Million, One Hundred Eighty Thousand Dollars (\$10,180,000.00) (the “Eligible Project Costs”); and

WHEREAS, the Developer has experienced an increase in construction costs related to the public parking garage including installation of an automated parking system; and

WHEREAS, the City and Developer desire to amend the Project Plan to increase the amount of Eligible Project Costs to Eleven Million, Two Hundred Seventy Thousand Dollars (\$11,270,000) to include the increased construction costs related to construction of the public parking garage and to make other conforming changes to the Project Plan; and

WHEREAS, the Governing Body of the City of Wichita, Kansas, by Resolution number R-10-073 adopted March 23, 2010, set a public hearing to consider the adoption of the second amendment to the Exchange Place Project Plan on the 13th day of April,

2010, at 9:00 a.m. or thereafter, in the city Council Chambers, City Hall, 455 N. Main, Wichita, Kansas; and

WHEREAS, the Governing Body is authorized following the public hearing to adopt the Second Amendment to the Project Plan by Ordinance passed upon a two-thirds vote.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

1. The Second Amendment to the Exchange Place Project Plan is attached hereto as Attachment A, and is incorporated by reference as though fully set forth herein. Said amendment is hereby adopted as the Second Amendment to the Project Plan for the Exchange Place Project Plan for the Center City South Redevelopment District.

2. This Ordinance shall be in force and effect from and after its passage, approval, and publication once in the official City paper.

ADOPTED AND PASSED BY THE GOVERNING BODY, not less than two-thirds (2/3) of the members elect voting in favor thereof _____.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney

ORDINANCE NO. 48-729

AN ORDINANCE AUTHORIZING THE ISSUANCE OF FULL FAITH AND CREDIT TAX INCREMENT BONDS OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF ACQUIRING REAL PROPERTY, DEMOLITION OF EXISTING STRUCTURES, AND DESIGN AND CONSTRUCTION OF A PUBLIC PARKING GARAGE, AND SITE IMPROVEMENTS IN THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT, EXCHANGE PLACE PROJECT AREA.

WHEREAS, Article 12, Section 5 of the Kansas Constitution empowers cities to determine their local affairs and government; and

WHEREAS, the City of Wichita, Kansas (the "City") desires to promote, stimulate and develop the general economic welfare and prosperity of the City and its environs, to provide for commercial redevelopment of declining areas, avoid economic stagnation and maintain attractive neighborhoods; and

WHEREAS, the proposed Project Plan for the Exchange Place Project (the "Redevelopment Project"), located within the Center City South Redevelopment District, has been found by the Wichita Sedgwick County Metropolitan Area Planning Commission to be consistent with the comprehensive general plan for the development of the community, and is under consideration concurrently herewith; and

WHEREAS, the Governing Body of the City has found and determined that it is necessary and desirable, and in the interest and for the general economic welfare of the City and its inhabitants, that the City acquire land to contribute to the Redevelopment Project, demolish certain existing structures thereon, design and construct a public parking garage and make certain site improvements in the area of the Redevelopment Project; and

WHEREAS, under the authority of Article 12, Section 5 of the Kansas Constitution and K.S.A. 12-1770, *et seq.*, the Governing Body of the City hereby finds and determines that it is necessary and desirable and in the interest and for the general economic welfare of the City and its inhabitants, that full faith and credit tax increment bonds of the City, in an amount not to exceed \$9,740,000, exclusive of the costs of interest on borrowed money, be authorized and issued for the purpose of paying all or a portion of the costs of the land acquisition, demolition, design and construction of a parking garage and site improvements referred to in the preceding clause,

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it is necessary to acquire real property located within the project area of the Center City South Redevelopment District, to demolish certain existing structures located thereon, and to design and construct a public parking garage and site improvements located within the project area of the Center City South Redevelopment District.

SECTION 2. The governing body hereby declares it to be its intention to issue and sell, in the manner provided by law, full faith and credit tax increment bonds (the “Bonds”) under the authority of Article 12, Section 5 of the Kansas Constitution and K.S.A. 12-1770 *et seq.*, to pay all or a portion of the costs of acquiring the property located within the Exchange Place Project Area, demolishing certain existing structures located thereon, and designing and constructing a public parking garage on Douglas Avenue and site improvements located within the project area of the Center City South Redevelopment District. The costs of such acquisition, demolition and improvements, or a portion of such costs, shall be paid by the issuance of full faith and credit tax increment bonds as aforesaid in an amount not to exceed \$11,270,000, exclusive of the costs of interest on borrowed money.

SECTION 3. It is hereby further authorized, ordered and directed that in order to temporarily finance the aforesaid costs prior to the issuance of the Bonds as hereinbefore provided, there may be issued temporary improvement notes (the “Notes”), the aggregate amount of which shall not exceed the sum of \$11,270,000, exclusive of the cost of interest on borrowed money, such Notes to be issued from time to time upon subsequent ordinance of the City which shall provide and set forth the details of the Notes, including the fixing of the dates, terms, denominations, interest rates and maturity dates thereof. Such Notes shall be issued and provision shall be made therefor as funds are needed and required for the orderly completion of the aforesaid land acquisition, demolition work and improvements. Any Notes issued under the authority of this Section shall be issued under and will contain a recital that they are issued under the authority of K.S.A. 10-123 and K.S.A. 12-1774, as amended and supplemented, and Article 12, Section 5 of the Kansas Constitution, and shall contain all other usual and required recitals and covenants and be in the form required therefor by said K.S.A. 10-123, as amended and supplemented; and said Notes may be issued in combination with any other temporary notes being issued by the City as shall be determined by the Governing Body at the time of such issuance to be in the City's best interests.

SECTION 4. This Ordinance shall take effect and be in force from and after its passage and publication one time in the official City paper.

PASSED AND APPROVED BY the Governing Body of the City of Wichita, Kansas,
this ____ day _____, 2010.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

**SECOND AMENDMENT
CENTER CITY SOUTH REDEVELOPMENT DISTRICT
FOR EXCHANGE PLACE PROJECT PLAN
April 20, 2010**

THIS Second Amendment to the Center City South Redevelopment District Project Plan is dated April 20, 2010 with respect to the following facts and objectives:

A. The City of Wichita, Kansas adopted a Project Plan (the “Project Plan”) with respect to redevelopment by Lofts at Exchange Place, LLC and Douglas Avenue Parking Garage, LLC (the “Developer”) of certain real property located adjacent to the intersection of Douglas Avenue and Market Street in Wichita, Kansas (the “Project Area”).

B. The Project Plan specifies that the total expenditures eligible for Tax Increment Financing pursuant to State Statute is Six Million Five Hundred Eighty Thousand Dollars (\$6,580,000.00) (the “Eligible Project Costs”).

C. The City amended the Project Plan December 16, 2008 to increase the TIF eligible project costs from Six Million Five Hundred Eighty Thousand Dollars (\$6,580,000) to Ten Million One Hundred Eighty Thousand Dollars (\$10,180,000), acquire additional land, and change the project description from the construction of 91 residential condominiums to 201 residential apartments.

D. The Developer has determined a need for additional parking to accommodate apartment residents and public parking demands. Due to limited space to construct a parking garage, the developer has contracted with a manufacturer of an automatic parking system. The system increases the parking from 229 to 273 (shared parking) spaces, due to efficiencies gained from removing self parking. Costs to construct a parking garage suitable for such system, and the costs of the system itself have made the project no longer feasible with the current approved TIF Eligible Costs.

E. The Developer desires as second amendment to the Project Plan to increase the number of residential apartments from 201 to 230 units, to increase the amount of Eligible Project Costs to include the additional cost to construct the public parking garage, to include the purchase and installation of an automatic parking system and to make other conforming changes to the Project Plan.

NOW, THEREFORE, the Project Plan is hereby amended as follows:

Section 1. The amount of Eligible Project Costs, including financing costs, is hereby increased from Ten Million One Hundred Eighty Thousand Dollars (\$10,180,000.00) to Eleven Million Two Hundred Seventy Thousand Dollars (\$11,270,000.00). The list of Eligible Project Costs (exclusive of financing costs) is attached hereto as Exhibit B.

Section 2. The Project Description is hereby changed from the construction of 201 apartments to the construction of a total of 230 apartments between the Exchange Place and Bitting Buildings and the parking structure will change from at least 229 spaces to at least 273 shared spaces with the implementation of an automated parking system. A revised Project Description is attached hereto as Exhibit C.

Section 3. The Comprehensive Financial Feasibility Study for the Exchange Place Project is hereby amended by replacing Exhibits II, III and IV with those attached hereto as Exhibits II, III, and IV Second Amendment.

Section 4. All other terms and provisions of the Project Plan shall remain unchanged and in full force and effect.

CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney

EXHIBIT B

Exchange Place Project

Related Public Improvements Development Budget

<u>Budget Item</u>	<u>Not-to-exceed Cost</u>
Property Acquisition:	\$3,325,000
Parking Structure:	\$6,975,000
Total Related Public Improvements Financed by Tax Increment Financing	<u>\$10,300,000</u>

EXHIBIT C

Center City South Redevelopment District

DESCRIPTION OF PROPOSED EXCHANGE PLACE PROJECT

PROJECT DESCRIPTION

The Project consists of two major components: (1) creation of 230 residential units and retail space in the downtown core by renovation of the Exchange Place Building and the Bitting Building and construction of a new Douglas Building and (2) construction of a new 273 stall Parking Garage.

Residential Units and Retail. The Exchange Place Building and the Bitting Building are located on the Northeast and Northwest corners of East Douglas and Market. The new Douglas Building will be located east of the Exchange Place Building. They will be converted and constructed into a residential and commercial complex which the Developer intends to convert and sell as condominiums. Any such sale might include a sale of the Parking Facilities to the condominium owners. Overall, the Project will provide:

- 230 residential apartments; and
- Approximately 16,000 square feet of street level retail space.

The collective apartments for all three buildings will be called Exchange Place apartments. Retail space will be located on the ground floor and serve occupants of the buildings as well as enhancing the availability of services for other workers and residents in the Downtown core area. Construction will begin after closing of the construction loan, and is anticipated to begin in the 3rd quarter of 2010 and be completed in eighteen months with an estimated cost of improvements of not less than \$30,000,000.

Parking Facilities. Developer will construct a multilevel Parking Garage on the 200 block of East Douglas, west of the Kress Building and north / behind the new Douglas Building to contain 273 (shared parking) spaces. Additional parking spaces (14) will be located behind (north of) the Exchange Place Building. These two facilities are collectively described as the Parking Facilities and will contain approximately 287 parking spaces. A minimum of 103 of these spaces will be available for daily and monthly public use. Construction is anticipated to begin in the 3rd quarter of 2010 and be complete in the 2nd quarter of 2011 at an estimated cost of approximately \$7,834,730. The City will fund \$6,975,000 of the construction costs.

Compatible Facing. The Douglas Avenue sides of The Exchange Place Building/ and the Douglas Building will be designed to have compatible facing. The Project's exterior facades have already been reviewed and approved by the City's Historic Preservation Board. Plans will also be submitted for review by the Design Council.

Assumptions Report

City of Wichita, Kansas
Center City South Redevelopment District
Exchange Place Project

Description of Project Area	See Map (Exhibit A)
Original Appraised Value (1/1/07)	\$44,647,990
Original Assessed Value (1/1/07)	8,800,420
Projected Appraised Value (1/1/15)	\$133,525,193
Projected Assessed Value (1/1/15)	24,803,848

<u>2009 Mill Rates (2010 Pay)</u>	<u>Total</u>	<u>TIF Applicable</u>
City of Wichita	32.142	32.142
Sedgwick County	29.868	29.868
USD No. 259	56.850	36.850
State of Kansas	1.500	NA
SSMID	5.963	5.963
Total	126.323	104.823

Property Value Inflation Rate	3%
Property Value Appeal Rate	-1%

RESOLUTION NO. 10-114

A RESOLUTION ESTABLISHING THE ORDER OF SUCCESSION AS MAYOR OF THE CITY OF WICHITA, KANSAS, IN THE ABSENCE FROM THE CITY OF THE MAYOR AND THE VICE MAYOR.

WHEREAS, Section 2.04.032 of the City Code provides that the City Council is to designate from the membership thereof, members to serve as Mayor in the absence from the City of the Mayor, Vice Mayor, or other Council Members:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF WICHITA, KANSAS:

SECTION 1. That the order of succession as Mayor of the City of Wichita, Kansas, in the absence therefrom of the Mayor and the Vice Mayor or other Council Member shall be:

Council Member Paul Gray
Council Member Lavonta Williams
Council Member Janet Miller
Council Member Sue Schlapp
Council Member Jim Skelton

SECTION 2. This Resolution shall be in force and effect after its due passage.

ADOPTED at Wichita, Kansas, this April 27, 2010.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: CDBG Budget Modification (Districts I, III)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Authorize the recommended budget modification.

Background: On April 21, 2009, the City Council approved an allocation of \$61,500 from the 2008-2009 CDBG allocation to partially fund the annual salary and equipment costs for an inspector in the Office of Central Inspections (OCI) assigned to StopBlight Action Response Team (START) target areas. This funding was approved to cover salary costs for one year because of the reduction in building permit fee revenue that occurred during the economic downturn.

Analysis: On June 2, 2009, the Council approved the annual Consolidated Plan budget which included \$171,000 for demolition of dangerous buildings. Condemnation orders have not occurred at the same pace as in prior years. At the same time, building permit fee revenue has not completely rebounded, leaving shortfalls in OCI operational revenue. As a result staff propose that the original allocation of \$171,000, be reduced by \$71,000 in order to fully fund the annual costs for an inspector salary, benefits and equipment.

OCI program managers anticipate that this reduction will not significantly impact demolition activity during the next year. The inspector will continue to work in Districts I and III and will be responsible for routine inspection duties such as initiating and following up on housing and zoning code cases, performing nuisance and graffiti inspections, and initiating tall grass and weeds cases. The position will also continue to be a member of the START teams in both districts.

Financial Considerations: The total annual cost associated with this change is \$71,000. This is within the original funding amount for this category and will not require general funds.

Goal Impact: This proposed funding change will impact the Economic Vitality & Affordable Living and Quality of Life goals.

Legal Considerations: This modification will not require a substantial amendment to the Consolidated Plan Annual Action Plan, because it does not exceed 20% of the annual grant amount, nor is it a new activity.

Recommendations/Actions: It is recommended that the City Council authorize the recommended budget modification.

Attachments: Revised annual plan spreadsheet.

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Transportation Services Agreement with Sedgwick County

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the agreement.

Background: Since 2002, first the City of Wichita and later Sedgwick County have entered into annual revenue guarantee agreements with AirTran Airways that have resulted in more than \$400 million in cost savings to businesses and individuals flying in and out of Wichita Mid-Continent Airport.

In 2006, the Kansas Legislature passed legislation that provides state funding in the amount of \$5 million per year for five years to support efforts to ensure affordable airfares in Kansas. The annual grants are made through the Regional Area Economic Partnership (REAP) for programs that provide more flight options, more competition for air travel, and affordable air fares for Kansas. The state funding is subject to annual appropriation and requires a local match.

In 2007, The Wichita Airport Authority negotiated the re-entry of Frontier Airlines into the Wichita air service market, with three daily flights to Denver. In addition to the package of airport-related incentives, the discussions with Frontier included providing revenue guarantee payments in an amount not-to-exceed \$500,000 as an incentive to provide three daily flights instead of two.

The first three years of state funding were awarded to Sedgwick County to defray most of the cost of the AirTran revenue guarantee. The fourth year of state funding, for the current state fiscal year, also has been awarded to Sedgwick County in the amount of \$4,875,000. As in past years, the local match would be provided under the terms of the attached Transportation Services Agreement between the City and Sedgwick County.

On July 8, 2009, the Sedgwick County Board of County Commissioners approved a new contract with AirTran Airways for discount air service to Atlanta with a revenue guarantee capped at \$6.5 million for the period from July 1, 2009 through June 30, 2010. Frontier Airlines has recently requested a revenue guarantee to allow a return to jet service to Denver through June 30, 2010.

Analysis: In 2009, Frontier did not request renewal of a revenue guarantee when the existing agreement expired June 30. More recently, though, Frontier has been acquired by Republic Airlines. Republic has reassessed Wichita service, changed the service from turbo-prop to jet airplanes, and requested a new revenue guarantee of up to \$500,000 for a contract period ending June 30, 2010.

On behalf of the City, Sedgwick County has requested and been awarded \$125,000 of state funding for this purpose by REAP. Subject to City Council approval of the attached funding agreement, Wichita has offered to fund the required local match of \$41,667. Funds need to be transferred to REAP in order to draw State funds before the end of the 2010 legislative session.

The proposed agreement between Wichita and Sedgwick County (which was submitted for consideration by the Sedgwick County BOCC on April 21) is similar to those approved previously. Under the proposed agreement, Wichita will provide \$41,667 in support of the County's obligations to Frontier. With the state funding, a total of \$166,667 will be available to provide revenue guarantees to Frontier for the period ending June 30, 2010.

Financial Considerations: This agreement obligates the city to provide local matching funds totaling \$41,667 required to access the \$125,000 in state funding that has been awarded to the County. Upon approval of this agreement the City will pay the match to the county, and the county will forward it to REAP. REAP then will draw the state funds and will pay the entire \$166,667 to the county. At that time the county will establish a budget in the Affordable Airfares Fund to receive the REAP payment and appropriate the funds to Frontier revenue guarantee payments. Any City funds are not spent on the Frontier revenue guarantee will be returned to the City.

Goal Impact: Economic Vitality and Affordable Living. Affordable air service is one of the most critical cost factors impacting the decision of businesses to move to Wichita or to remain in Wichita. It also has a strong impact on the ability to attract and retain workers, and to provide a high quality of life to families in the region.

Legal Considerations: The attached funding agreement between the City and County has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the City Council approve the contract and authorize the necessary signatures, and authorize any necessary budget adjustments.

Attachments: Transportation Service Agreement

AIR TRANSPORTATION SERVICES FUNDING AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, hereinafter referred to as "City," and SEDGWICK COUNTY, KANSAS, hereinafter referred to as "County."

WHEREAS, Frontier Airlines, a wholly owned subsidiary of Republic Airways Holdings, Inc. ("Frontier") has agreed to operate daily round-trip jet service between Wichita and Denver subject to receiving a revenue guarantee to offset its financial losses; and

WHEREAS, Frontier will enter into an agreement with County defining the conditions of operating said jet service and which will further define the financial responsibilities of both parties relative to the revenue guarantee; and

WHEREAS, County has been awarded funds from the State Affordable Air Fares program by the Regional Economic Area Partnership for use by Frontier as a revenue guarantee; and

WHEREAS, the Affordable Air Fares program requires a 25% local match for the state funds; and

WHEREAS, City finds that maintaining competitive airfares for this community will benefit both residents and businesses of Wichita and provide an economic benefit to all citizens; and

WHEREAS, the purpose of this agreement is to state the terms and conditions under which City will provide said funding.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. SERVICE(S). County will fulfill its obligations with Frontier as will be set forth in an agreement with Frontier (the "Frontier Funding Agreement"), and in doing so will fully enforce Frontier's contractual obligations to County at no cost to the City. County will in turn provide City copies of or access to all documents and information received by County relating to Frontier pursuant to the Frontier Funding Agreement. Upon execution of the Frontier Funding Agreement, County will provide a copy to City.

2. STATUS OF COUNTY. County and City agree that service(s) rendered under this agreement are rendered by County as a self-governing entity, and not as an officer, agency, agent or employee of City. City supplies funding to County under this agreement as a secondary source of funding to support the service(s) described in Paragraph One (1) above, because of the benefit of the service(s) to residents of Wichita.

3. TERM. This agreement shall be effective upon approval of both parties and shall terminate on June 30, 2010.

4. TERMINATION. This contract may be terminated in whole or in part by either party, for any reason, upon thirty days written notice to the other party, stating the reasons for the termination and the effective date of the termination. Whether this contract is canceled by City or County, County shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by County.

5. COMPENSATION. In consideration for the service(s) described in Paragraph One (1) above, provided by County for residents of Wichita, City shall cause payment to be made to County in the amount of up to \$41,667.00 upon receipt of an invoice from County. County agrees that billing and payment under this agreement shall be processed in accordance with established budgeting, purchasing, and accounting procedures of Wichita, Kansas. Payment shall be made to County only for service(s) described in Paragraph One (1) of this agreement. Payment shall be mailed to County's address as follows:

Chief Financial Officer
Sedgwick County
525 N. Main, Ste. 823
Wichita, KS 67203
Telephone 316.660.7591
Fax 316.383.7729

The City's payment obligation hereunder is expressly contingent upon the County's full performance of its payment obligations under the Frontier Funding Agreement. The City's payment obligation shall in no event exceed the sum of \$41,667.00, and to the extent that a lesser aggregate sum is due under the Frontier Funding Agreement due to decreased required subsidy, then the City shall be deemed to have fully performed its obligations hereunder.

6. FUNDING PURPOSE. County shall apply all compensation received from City toward no purpose other than to fulfill County's obligation to Frontier. Should the County fail to enter into an agreement with Frontier, then County shall return all funds paid to County by City.

7. CASH BASIS AND BUDGET LAWS. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

8. MONTHLY REPORTS. County shall furnish to City, on a monthly basis copies of the reconciled block hour or other financial and operational reports it receives from Frontier.

9. INTEREST OF PUBLIC OFFICIALS AND OTHERS. No officer or employee of City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this agreement shall participate in any decision relating to this agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly

interested, nor shall any officer or employee of City, any member of its governing body or any other public official have any interest, direct or indirect, in this agreement or the proceeds thereof.

10. TRANSFER OR MODIFICATION. Neither this agreement nor any rights or obligations hereunder shall be assigned, subcontracted, or otherwise transferred by either party without the prior written consent of the other. Any modifications to this agreement must be set forth in writing and signed by both parties.

11. APPLICABLE LAW. This agreement shall be construed in accordance with the laws of the State of Kansas.

12. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION. County shall comply with all applicable local, state and federal laws, and regulations, and applicable service standards, in carrying out this agreement, regardless of whether those legal requirements are specifically referenced in this agreement. Equal Opportunity and Affirmative Action: In carrying out this contract, County shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 *et seq.*

A. County shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, County shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If County fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, County shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by City.

D. If County is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, County shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by City.

E. County shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the City cumulatively total \$5,000.00 or less during the fiscal year of the City pursuant to K.S.A. 44-1031(c).

13. AUTHORITY. Each person executing this Agreement represents and warrants that he is duly authorized to do so on behalf of an entity that is a party hereto.

IN WITNESS WHEREOF, City and County have executed this contract as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

KARL PETERJOHN, Chairman
Third District

ATTEST:

KELLY ARNOLD, County Clerk

APPROVED AS TO FORM:

JENNIFER MAGAÑA
Deputy County Counselor

CITY OF WICHITA, KANSAS

CARL BREWER, Mayor

KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

GARY REBENSTORF, City Attorney

City of Wichita
City Council Meeting
April 27, 2010

To: Mayor and City Council

Subject: Child Care Licensing Grant Application (all districts)

Initiated By: Office of Environmental Health

Agenda: Consent

Recommendation: Authorize the grant application

Background: The Office of Environmental Health conducts surveys of childcare facilities and provides education for childcare providers within Sedgwick County on behalf of the Kansas Department of Health and Environment. KDHE provides an annual grant to fund these activities, and has solicited the Office of Environmental Health's application for state fiscal year 2011 (July 1, 2010 through June 30, 2011)

Analysis: The City has conducted childcare licensing and education services in excess of thirty years, providing a local point of contact for citizens and providers. Local operation of the program also enhances coordination with other agencies involved, such as the Fire Department and Office of Central Inspection. Environmental Health staff members enforce city ordinances and state regulations, and utilize state enforcement mechanisms, as appropriate.

Financial Consideration: The grant request for state fiscal year 2011 totals \$297,492. The program is also supported by the City's General fund in the amount of \$138,484; the local contribution is partially offset by inspection fees, which in 2009 \$134,758 in revenue was collected. State funding and locally generated fees are projected to offset 99% of the total program cost of \$435,976.

Goal Impact: This action furthers the Council's "Provide a Safe and Secure Community" goal via surveys and regulation of childcare facilities.

Legal Consideration: The grant agreement will be reviewed by the Department of Law upon receipt, for approval as to form, and submitted to the Council for acceptance.

Recommendation/Actions: It is recommended the City Council approve the grant application, the grant award, if applicable, and authorize the necessary signatures.

Attachment: KDHE Grant application

State of Kansas

Department of Health & Environment

Form #1

Bureau of Local & Rural Health

1000 SW Jackson, Suite 340

Topeka, KS 66612-1365

(785) 296-0425

pbehnke@kdheks.gov

This document must be signed and dated by appropriate authorities as noted at the bottom of form #1. Forward to pbehnke@kdheks.gov

To be completed by State Office

Date Received:

Grant Period: July 1, 2010 - June 30, 2011

APPLICATION FOR GRANT

Applicant (Name of Agency)

Street Address/PO Box

City

Zip Code

Name of Director

Telephone: Area Code-Number

Fiscal Officer

Telephone: if different from Applicant Agency

Type of Organization

FEIN #

Where will program be conducted?

Comments:

President/Chairman Local Board of Health or Board of Director

Date: _____

Application Checklist:

☐ Health Department approved budget

☐ Local Tax Revenue Amount

☐ Program Objectives

☐ Detailed Budget(s)

☐ Personnel Allocation by Program

GRANT FUNDS REQUESTED

State Formula

Chronic Disease Risk Reduction

Family Planning

SN-PHN Collaborative Practice

Opt-Out HIV Testing

Targeted HIV Testing

STD Disease Intervention /
Prevention Services

Maternal & Child Health

Child Care Licensing & Regulations

Community Based Primary Care

Prescription Assistance to Clinics

Dental Assistance

Targeted HIV Prevention for Health
Departments

Ryan White

Immunization Action Plan

WIC/IAP Collaborative

Targeted HIV Prevention for
Community Based Organizations

Other

Total Funds Requested

Administrator/Director

Date: _____

APPLICATION FOR GRANT INSTRUCTIONS

Complete form is required as the cover sheet for each applicant's application.

The following fields must be completed:

1. Name of your agency (county health department or other local agency)
2. Address
3. Director's name
4. Telephone number (contact person if questions regarding application)
5. Fiscal Officer
6. Telephone number (contact person if questions regarding budget)
7. Type of organization
8. Federal Employee Identification Number (FEIN)
9. Where your program will be conducted

Application Checklist - Indicate the items included in your application packet:

1. Copy of the Health Department Budget (health department only)
2. Local Tax Revenue (health department only)
3. Program Objectives
4. Detailed budgets
5. Personnel Allocation (form #14) by each program

Grant Funds Requested: Enter here the amount of GRANT funds being requested from the Kansas Department of Health and Environment, on the appropriate line(s). Please do NOT include matching or other local funds.

Signatures: The Application must be signed by both the President/Chairman of the Local Health Board **AND** the Administrator/Director of the local agency for **all county health departments**. For other agencies only one signature is required.

1. Scan signed form and e-mail with application
2. Fax signed form to (785) 296-1231 then mail only that form to:
KDHE/BLRH
1000 SW Jackson, Suite 340
Topeka, KS 66612-1365
Attention: Aid to Local

COMMENTS: This section should be used to explain or clarify your funding requests, (e.g. an increase in Family Planning is requested due to 25% increase in case load; an increase in Maternal and Child Health is requested to offset the decrease in tax revenue from depressed agriculture economy, etc.)

SFY 2011 Personnel Allocation by Program

Local Agency Name:

Date:

Form #14

[illegible]

* Annual salary or hourly rate x no. of hours to be worked that year

**Total must not exceed 100%

**COMPLETION INSTRUCTIONS FOR
PERSONNEL ALLOCATION BY PROGRAM**

Instructions to complete the Personnel Allocation By Program form are as follows. This information must be in agreement with the detailed budget(s) filed with individual Program Attachment(s).

Local Agency Name - **Print or type the name of the organization making the application or receiving an award.**

Employee Name - **Identify the employee in the position.** You can abbreviate with last name, initials, position number, etc. If the position is vacant or a new position, indicate such by "Vacant", "New", "to be hired", etc., in this column.

Position Title - Use drop down list to best identify position of employee.

Salary - The annual salary is the total salary that the agency pays each employee. It should match the salary that is used on the budget.

Program Titles - List the specific % time worked under the appropriate program title(s).

Other - Identify what Program(s) the employee is reported working on, if the program is not one previously reflected.

Total - Total must not exceed 100% for any employee.

Use additional pages as necessary.

Salaries and percent of time worked should be rounded to the nearest whole figure.

Footnote any discrepancies or clarify what is being reflected.

All budgets submitted must be in agreement. The administering county for multi-county programs are responsible for obtaining correct and up-to-date information on salaries and percent of time worked on other grants for each sub-grantee(s). Any discrepancies will delay state review and approval. It is encouraged to reflect the county the employee is employed by for comparison purposes.

If you have questions while completing this form, please contact Kevin Shaughnessy (785) 296-1507, Internal Management/Accounting Services.

Program Request

Form #2

Applicant Name: _____

Program Title: **Child Care Licensing and Registration Program**

Instructions: List basic services to be provided with Child Care Licensing and Registration Program funds.

Term: July 1, 2010 through June 30, 2011

Program Objectives:

Requested funds:

Comments:

Formulas are set to round numbers
to the nearest dollar.

Program: Child Care Licensing and Registration Program

Name and Position	Annual Salary for Grant Period	% of Time Worked	Total	Grantees Share	Total Requested From Grant
FICA	enter %	7.65			
Retirement and Benefits - percentage	enter %				
Unemployment	enter %				
Workman's Compensation	enter %				
Health/Dental Insurance - Single Coverage	enter %				
Health/Dental Insurance - Family Coverage	enter %				
Category Total					
Travel					
Category Total					

Supplies			
Category Total			
Capital Equipment			
Category Total			
Other (Itemize)			
Category Total			
KDHE use only:			
Audited by:			
Category Total			
GRAND TOTAL			

COMPLETION INSTRUCTIONS FOR DETAILED BUDGET FOR GRANT FUNDS

The budget is the plan for necessary financing to achieve the process and outcome objectives. The plan for financing should receive serious consideration so that few changes will occur to budget line items during the administration of the grant. If for some reason, during the grant award period a variance of more than 10% to a line item should occur, an amended budget should be filed with Kevin Shaughnessy at kshaughnessy@kdheks.gov or by contacting him at (785) 296-1507.

1. Enter the name of the organization requesting the grant award.

2. Under Personnel enter each employee and their position or "VACANT" if not currently filled.

- Annual Salary for Grant Period is the total salary that the Local Agency pays each employee for the year.
- % of Time Worked should be the percentage of time that position spends on the program.
- Total will automatically calculate salary * %
- "Grantees Share" is the amount provided by local agency (enter the amount).
- Total requested from grant is the amount you are requesting from KDHE.
- Retirement and F.I.C.A. should be shown as separate items and are based on the total salary(ies) for the program. Please indicate the percentage rate used for retirement, insurance, etc., as each Local Agency differs in these areas. Please identify the salaries used in calculating retirement, insurance, etc.

3. Include only meals, lodging, transportation and other miscellaneous expenses. Do not include salary of employee during travel.

4. Expendable supplies include all types of supplies. Do not include capital items.

5. Capital Equipment is defined as items costing \$500 or more with a useful life greater than one year. **If possible, either avoid budgeting for capital equipment or show it financed in the Local Applicant's share column.** All Capital Outlay expenditures charged against the State Grant Award must be authorized in the grant award contract or authorized by the State Program Director in writing. Each capital item should be **listed separately.**

6. Expenditure items in the "Other" category would include contractual services such as consultants, rental of equipment, etc. Each projected expenditure item in the "Other" category should be **listed separately.**

Indirect cost and contributions are acceptable as part of the **Local Match Only**, after the agency has submitted an annual indirect cost proposal which meets KDHE requirements. Items included in the indirect cost computation cannot be included as direct cost items.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

MARK PARKINSON, GOVERNOR

In order to update our records and accurately allocate funding please complete and submit this form with the grant application for each surveyor or assistant surveyor. Also please complete and submit this form for each new surveyor or assistant surveyor employed to do inspections for child care licensing and registration when they are hired.

PLEASE COMPLETE ALL INFORMATION.

Check on: ☐ Surveyor ☐ Assistant Surveyor

For the following county(ies): _____

Name _____

Education:

Highest degree achieved: Specify Field: _____

Number of Credit Hours in Early childhood or Child Development courses:

Number of Credit Hours in Health related courses:

Name and location of accredited College or University: _____

List all current Professional Certificates or Licenses held: _____

Experience:

In years, how long have you worked in child care licensing and registration?

Job Title: _____

Professional Activities/Memberships: _____

BUREAU OF CHILD CARE & HEALTH FACILITIES
CHILD CARE LICENSING & REGISTRATION PROGRAM
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1274
<http://www.kdheks.gov>



K A N S A S

RODERICK L. BREMBY, SECRETARY

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PLEASE COMPLETE ALL INFORMATION.Check on: ☐ Surveyor ☐ Assistant Surveyor

For the following county(ies): _____

Name _____

Education:

Highest degree achieved:

Specify Field: _____

Number of Credit Hours in Early childhood or Child Development courses:

Number of Credit Hours in Health related courses:

Name and location of accredited College or University: _____

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Experience:

In years, how long have you worked in child care licensing and registration?

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Professional Activities/Memberships: _____

BUREAU OF CHILD CARE & HEALTH FACILITIES
CHILD CARE LICENSING & REGISTRATION PROGRAM
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1274
<http://www.kdheks.gov>



K A N S A S

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For the following county(ies): _____

Name _____

Education:

Highest degree achieved: Specify Field: _____

Number of Credit Hours in Early childhood or Child Development courses:

Number of Credit Hours in Health related courses:

Name and location of accredited College or University: _____

List all current Professional Certificates or Licenses held: _____

Experience:

In years, how long have you worked in child care licensing and registration?

Job Title: _____

Professional Activities/Memberships: _____

BUREAU OF CHILD CARE & HEALTH FACILITIES
CHILD CARE LICENSING & REGISTRATION PROGRAM
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1274
<http://www.kdheks.gov>



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

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PLEASE COMPLETE ALL INFORMATION.

Check on: ☐ Surveyor ☐ Assistant Surveyor

For the following county(ies): _____

Name _____

Education:

Highest degree achieved: Specify Field: _____

Number of Credit Hours in Early childhood or Child Development courses:

Number of Credit Hours in Health related courses:

Name and location of accredited College or University: _____

List all current Professional Certificates or Licenses held: _____

Experience:

In years, how long have you worked in child care licensing and registration?

Job Title: _____

Professional Activities/Memberships: _____

BUREAU OF CHILD CARE & HEALTH FACILITIES
CHILD CARE LICENSING & REGISTRATION PROGRAM
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1274
<http://www.kdheks.gov>



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

MARK PARKINSON, GOVERNOR

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PLEASE COMPLETE ALL INFORMATION.Check on: ☐ Surveyor ☐ Assistant Surveyor

For the following county(ies): _____

Name _____

Education:

Highest degree achieved:

Specify Field: _____

Number of Credit Hours in Early childhood or Child Development courses:

Number of Credit Hours in Health related courses:

Name and location of accredited College or University: _____

List all current Professional Certificates or Licenses held: _____

Experience:

In years, how long have you worked in child care licensing and registration?

Job Title: _____

Professional Activities/Memberships: _____

BUREAU OF CHILD CARE & HEALTH FACILITIES
CHILD CARE LICENSING & REGISTRATION PROGRAM
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1274
<http://www.kdheks.gov>



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

MARK PARKINSON, GOVERNOR

In order to update our records and accurately allocate funding please complete and submit this form with the grant application for each surveyor or assistant surveyor. Also please complete and submit this form for each new surveyor or assistant surveyor employed to do inspections for child care licensing and registration when they are hired.

PLEASE COMPLETE ALL INFORMATION.Check on: ☐ Surveyor ☐ Assistant Surveyor

For the following county(ies): _____

Name _____

Education:

Highest degree achieved:

Specify Field: _____

Number of Credit Hours in Early childhood or Child Development courses:

Number of Credit Hours in Health related courses:

Name and location of accredited College or University: _____

List all current Professional Certificates or Licenses held: _____

Experience:

In years, how long have you worked in child care licensing and registration?

Job Title: _____

Professional Activities/Memberships: _____

BUREAU OF CHILD CARE & HEALTH FACILITIES
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<http://www.kdheks.gov>



DEPARTMENT OF LAW
INTEROFFICE MEMORANDUM

TO: Karen Sublett, City Clerk
FROM: Gary E. Rebenstorf, Director of Law
SUBJECT: Report on Claims for March 2010
DATE: April 14, 2010

The following claims were approved by the Law Department during the month of March 2010.

Black Hills Energy	\$1,180.53
Black Hills Energy	\$ 886.70
Cox Communications	\$ 239.11
Garcia, Pedro	\$3,775.00
Gorgas, Robin	\$1,050.00**
Harris, Richard	\$ 293.87
Hawkins, Latrina	\$ 114.00**
Hodges, James	\$ 249.50
Johnson, Gary	\$ 246.95
Kihega, Marian	\$ 200.00
State Farm Insurance Co.	\$3,551.89
Young, William	\$4,058.98

*City Manager Approval

** Settled for lesser amount than claimed

cc: Robert Layton, City Manager
Kelly Carpenter, Director of Finance

**City of Wichita
City Council Meeting
April 27, 2010**

TO: Mayor and City Council

SUBJECT: Century II Theatrical Rigging Contract

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the contract.

Background: On September 11, 2007, the Wichita City Council approved \$1.5 million dollars to fund improvements at the Century II facility. These improvements were programmed at the time to include a new marquee, security improvements, renovations to Convention and Concert Halls, kitchen upgrades, and meeting room improvements.

In 2008, marquee sign improvements and meeting room upgrades were completed, as well as expenditures in other budgeted areas. In the fall of 2008, management of Century II transitioned to the Division of Arts and Cultural Services. This led to a comprehensive re-evaluation of the facility's needs that focused on the restoration of the aging building's infrastructure. \$900,000 was identified remaining from the original \$1,500,000 bonding resolution. Renovations identified to be paid with the \$900,000 included repair of the terrazzo flooring, event equipment (tables, chairs, staging), ticket taker equipment, interior doors, Expo Hall sound equipment, stage equipment, and other miscellaneous expenses related to architectural fees. Theatrical upgrades in Concert and Convention Halls and Mary Jane Teall Theatre were identified as priority items as part of the stage equipment renovations. One of the items identified as a priority was the theatrical rigging in Concert and Convention Hall.

An independent inspection was completed in 2009 to identify the replacement and repairs necessary to bring the existing theatrical rigging up to current industry standards. A Request for Proposal was sent out seeking vendors to provide the necessary replacement and repairs to the current rigging as outlined in the inspection report.

Analysis: The Request for Proposal was mailed to 14 vendors, three vendors submitted proposals. A selection panel convened and conducted interviews with the three vendors who included Theatrical Services Inc., Atlanta Rigging Systems, and Associated Theatrical Contractors. Evaluation criteria for selecting a vendor included knowledge and experience with theatrical rigging, estimated cost and scope of work, and ability to meet the necessary constrained timeframe for completion of work. The selection panel selected Theatrical Services, Inc., as the vendor to complete the work based on the above evaluation criteria and their knowledge and experience with the existing rigging at Century II.

Financial Considerations: The quoted price for replacement and repairs for the theatrical rigging at Century II is all inclusive and fits within the proposed budget for this project. The total including replacement of existing manila rope operating line, replacement or repair of aircraft cable lift lines, replacement or repair of battens, and replacement of trim chains. The cost for all repairs or replacements of the theatrical rigging is \$52,002 for Concert Hall and \$54,367 for Convention Hall for a grand total of \$106,369.

Goal Impact: Quality of Life. The investment will help maintain and optimize public facilities and assets.

Legal Considerations: The Law Department has reviewed and approved the contract with Theatrical Services, Inc. as to form.

Recommendation/Action: It is recommended that the City Council approve the contract.

Attachments: Contract with Theatrical Services, Inc.

**CONTRACT
for
THEATRICAL RIGGING SERVICES AT CENTURY II**

THIS CONTRACT entered into this 27th day of April, 2010, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **THEATRICAL SERVICES INC.**, Telephone Number (316) 263-4415 hereinafter called "**CONTRACTOR**".

WITNESSETH:

WHEREAS, the **CITY** has solicited a proposal for Theatrical Rigging Services at Century II (Formal Proposal – FP030018); and

WHEREAS, CONTRACTOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services.** **CONTRACTOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP030018, which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal – FP030018, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **CONTRACTOR** prices below for Theatrical Rigging Services at Century II as per the proposal, plans, specifications, addenda and Contractor's proposal of March 26, 2010 and as approved by the City Council on April 27, 2010.

Provide all labor, materials, equipment and delivery to furnish and install theatrical rigging replacement or repair at Century II for:

Part I:

Part I Base Bid Concert Hall:	\$29,860.00
Part I Base Bid Convention Hall:	\$31, 449.00

Part II:

Part II for Concert Hall:	\$ 6,538.00
Part II for Convention Hall:	\$ 6,908.00

Part III:

Part III for Concert Hall: \$15,604.00

Part III for Convention Hall: \$16,010.00

FOR A NOT TO EXCEED TOTAL AMOUNT OF \$106,369.00

CONTRACTOR shall warrant materials and workmanship for (2) two years. Any required warranty work shall commence within (4) four hours of notification if notified within normal business hours.

3. **Term.** **CONTRACTOR** further agrees that the work under this contract shall be completed to the full satisfaction of the City Purchasing Manager of the City of Wichita **beginning on or after August 18, 2010 and to be completed no later than October 2, 2010.** Said work shall be done under the direct supervision of said Purchasing Manager, or such other person as the City Council may direct, and that said Purchasing Manager's decision as to the material used in said improvement and the method in which the work is to be done shall be final and conclusive upon the parties hereto. Working days shall be as defined in the Standard Specifications of the City of Wichita. This contract is subject to cancellation by the **CITY**, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **CONTRACTOR**.

4. **Indemnification and Insurance.**

CONTRACTOR will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 each occurrence \$500,000 each aggregate
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Property Damage Liability	\$500,000 each occurrence \$500,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence \$500,000 each aggregate
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2. Comprehensive Automobile Liability including all owned, non-owned and hired vehicles with minimum limits for:

Bodily Injury Liability	\$500,000 each accident
Property Damage Liability	\$500,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each accident
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3. <u>Workers' Compensation</u>	<u>Statutory</u>
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Employers Liability	\$100,000 each accident \$500,000 aggregate \$100,000 occupational disease
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The Insurance Certificate must contain the following:

- A. Statement that the Contractual Liability includes the Liability of the City of Wichita assumed by the Contractor in the contract documents.
- B. Cancellation – should any of the above policies be canceled before the expiration date thereof the issuing company will mail ten (10) days written notice to certificate holder.

5. **Independent Contractor.** The relationship of the **CONTRACTOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **CONTRACTOR** shall be considered an employee of the **CITY**.

6. **Compliance with Laws.** **CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

7. **No Assignment.** The services to be provided by the **CONTRACTOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

8. **Non-Discrimination.** **CONTRACTOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

9. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

10. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

11. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

12. **Representative's Authority to Contract.** By signing this contract, the representative of the contractor or **CONTRACTOR** represents the he or she is duly authorized by the contractor or **CONTRACTOR** to execute this contract, and that the contractor or **CONTRACTOR** has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:

CITY OF WICHITA, KANSAS

Janis Edwards
Deputy City Clerk

Carl G. Brewer
Mayor

APPROVED AS TO FORM:

THEATRICAL SERVICES INC.

Gary E. Rebenstorf
Director of Law

Signature

Print Name

Title (President or Corporate Officer)

EXHIBIT A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Century II Concert Hall Seating Contract

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Authorize the Division of Arts and Cultural services to enter into a contract with American Seating for an amount not to exceed \$600,000 for seating at Century II Concert Hall.

Background: On March 2, 2010 City Council approved a bonding resolution in the amount of \$2,310,000 dollars for renovations at Century II. Replacement of the seating in Century II Concert Hall was identified as part of the renovations outlined in the bonding resolution budget in the amount of \$750,000.

Seating in Concert Hall shows wear and requires continuous repair. The type of seating in Concert Hall is no longer manufactured which results in limited parts for replacement and additional time for staff to spend repairing seats. Due to season ticket sales by organizations using Concert Hall, replacement of Concert Hall seating requires specific measurements and seating type to fill the space.

Following policy, a Request for Proposal seeking chair replacement was sent to 43 vendors and four vendors submitted proposals. Three vendors were responsive in providing sample chairs that met the specifications outlined in the proposal. A selection panel convened and conducted interviews with the three vendors. The three vendors who submitted proposals and sample chairs included American Seating Company, Irwin Seating Company, and Track Seating.

Analysis: The selection panel used specific evaluation criteria to determine the seating they believe will provide the best value to the City of Wichita. The specific evaluation criteria included quality of the product, the durability of materials, the ergonomics of the seating, the economy of price and the vendor's ability to meet the proposed construction window of time for removal of existing seating and installation of the new chairs. In addition, the public was invited to vote for their choice of chair and the votes were taken into consideration in the final determination.

Based on the evaluation criteria, the selection panel selected American Seating Company as the best proposal to provide the new seating in Century II Concert Hall.

Financial Considerations: As part of the budget approval for the bonding resolution, \$750,000 was identified for the replacement of seating in Century II Concert Hall. Total cost of the seating will not exceed \$600,000.

Goal Impact: Quality of Life. The investment will help maintain and optimize public facilities and assets.

Legal Considerations: The Law Department has reviewed and approved the selection of American Seating.

Recommendation/Action: Authorize the Purchasing Manager to enter into a contract with American Seating for an amount not to exceed \$600,000.

Attachments: None

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Abatement of Dangerous & Unsafe Structures (Districts I, III, IV and VI)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendation: Approve the assessments and ordinances.

Background: The Office of Central Inspection supports neighborhood maintenance and improvement through abatement of public nuisances under Titles 18 and 20 of the City Code. State law and local ordinances allow the City to demolish or board up and secure private property that is in violation of Housing and Building Code standards, after proper notification of the responsible party/parties. A private contractor or City staff performs the work, and the Office of Central Inspection bills the cost to the property owner.

Analysis: State law and City ordinance allow placement of the demolition and board-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the demolition and board up abatements in question, and Office of Central Inspection is requesting permission for the Department of Finance to process the necessary special assessments.

Financial Considerations: Statements of Charges will be mailed to the property owners on May 7, 2010. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The interest added to the principal amount will be determined by the rate at which the February, 2010 bonds sold. The principal and interest will then be spread for one year and placed on the 2010 tax roll.

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods: Continued revitalization of the Core Area. Dangerous building condemnation actions, including demolitions and emergency property board-ups, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The assessments are in accordance with City Code 18.16.070, 18.16.080 and 18.16.090.

Recommendations/Actions: It is recommended that the City Council approve the proposed assessments and place the ordinances on first reading.

Attachments: Property List – Special Assessments

<u>Tax Key#</u>	<u>Property List</u>	<u>Office of Central Inspection</u>	<u>Amount</u>	<u>District #</u>
CITY OF WICHITA OFFICE OF CENTRAL INSPECTION DATE: January 25, 2010				
D-01957	638 S Sycamore	emergency board-up	\$684.89	IV
D-01103	523 S Richmond	emergency board-up	\$714.64	IV
OFFICE OF CENTRAL INSPECTION DATE: January 29, 2010				
B-03592	1109 N Cleveland	emergency board-up	\$333.78	I
OFFICE OF CENTRAL INSPECTION DATE: February 5, 2010				
C-03027-1A	1106 N Chautauqua	emergency board-up	\$575.21	I
OFFICE OF CENTRAL INSPECTION DATE: March 8, 2010				
C-10789-4	401-03-05-07 N Bleckley	emergency board-up	\$240.67	II
C-20216	1621 N Ken Mar	emergency board-up	\$238.67	I
C-14718	945 N Parkwood	emergency board-up	\$147.40	I
C-17941	1116 N Oliver	emergency board-up	\$106.33	I
C-10689	645 N Bluff	emergency board-up	\$133.83	I
C-09996-1A	1742 N Poplar	emergency board-up	\$633.81	I
C-07723	1821 N Poplar	emergency board-up	\$494.98	I
OFFICE OF CENTRAL INSPECTION DATE: March 8, 2010				
C-21187	2237 North Estelle	emergency board-up	\$509.32	I
C-00904	1338 North Madison	emergency board-up	\$435.25	I
C-12677	2215 North Minneapolis	emergency board-up	\$109.49	I
(missing the hard copy???)				
OFFICE OF CENTRAL INSPECTION DATE: April 1, 2010				
C-03165	1132 N Green	emergency board-up	\$420.92	I
C-14018	2509 E Murdock	emergency board-up	\$648.86	I
C-55309	6024 S Minneapolis	emergency board-up	\$184.12	III
C-05150	1524 S Hydraulic	emergency board-up	\$186.88	III
<u>Tax Key#</u>	<u>Property List</u>	<u>Office of Central Inspection</u>	<u>Amount</u>	<u>District #</u>
OFFICE OF CENTRAL INSPECTION DATE: January 19, 2010				
C-03193-1	1608 N Volutsia	sealing the City Sewer	\$367.50	I
C-11170-1A	1040 S Vassar	sealing the City Sewer	\$367.50	III
OFFICE OF CENTRAL INSPECTION DATE: February 16, 2010				
C-01416	1817 N Spruce	gas services removal	\$373.92	I
A-06390	1437 S Wichita	gas services removal	\$373.92	III
OFFICE OF CENTRAL INSPECTION DATE: February 17, 2010				
C-12348	647 S Sylvan	gas services removal	\$373.92	I
OFFICE OF CENTRAL INSPECTION DATE: March 17, 2010				
C-03193-1	1608 N Volutsia	gas services removal	\$373.92	I
(Missing the hard copy ??????)				
OFFICE OF CENTRAL INSPECTION DATE: March 31, 2010				
C-12348	647 South Sylvan	sealing the City Sewer	\$367.50	I

_____ Published in the Wichita Eagle on **May 7, 2010**

ORDINANCE NO. 48-730

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE REMOVAL OF CERTAIN STRUCTURES, BEING DANGEROUS AND UNSAFE BUILDINGS WHICH HAVE BEEN DECLARED A NUISANCE **(BUILDING EMERGENCY BOARD-UP)** UNDER THE PROVISION OF SECTIONS 18.16.010 TO 18.16.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the sum set opposite the following lots, herein specified, be and the same is hereby levied to pay the cost of removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance under the provisions of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, located and situated upon the following described property:

DATE: 04/07/10

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT	PAGE
LOTS 7-9 PRIEST'S ADD.	333.78	1
LOTS 18-20 PILOT GROVE ADD.	435.25	
S1/2 LOT 106-ALL LOT 108 CHAUTAUQUA AVE FAIRMOUNT PARK ADD.	575.21	
LOT 21 & S 1/2 LOT 23 BLOCK 4 ESTERBROOK PARK ADD.	420.92	
LOTS 72-74 WALTER MORRIS ADD.	186.88	

LOTS 30-32 BLOCK 8 WESTMORELAND ADD.	494.98
LOTS 12-14 WALTER MORRIS & SONS 4TH ADD.	633.81
LOT 4 EXC W 5 FT & S 5 FT E 135 FT LOT 3 BLOCK 1 SLEEPY HOLLOW ADD.	133.83
LOT 10 BLOCK 1 EAST BOULEVARD ADD.	240.67
LOT 11 BLOCK G MILLAIR ADD.	109.49
LOT 33 PARKMORE 2ND. ADD.	648.86
LOT 13 BLOCK 3 COUNTRY SIDE ADD.	147.40
LOT 4 LLOYD BROWN ADD.	106.33
LOT 17 BLOCK 3 KEN-MAR ADD.	238.67
LOT 6 BLOCK AA AUDREY MATLOCK HEIGHTS 1ST. ADD.	509.32

PAGE 2

LOTS 333-335 PHILLIPS NOW RICHMOND AVE MARTINSON'S 5TH. ADD.	714.64
LOTS 2-4 SYCAMORE ST. GLENDALE ADD.	684.89
LOT 3 BLOCK 3 SOUTH HYDRAULIC GARDENS ADD.	184.12

SECTION 2. The sum so assessed and apportioned against the lots herein before set out and not paid within 30 days from date of notice sent out by the Debt Management Office of the Department of Finance as provided by law, shall be collected by special assessment upon the property liable therefore in one installment and placed upon the tax roll for the year **2010** and shall be certified to the County Clerk and shall be levied and collected in the same manner as other taxes, and the Debt Management Office of the Department of Finance is hereby directed to give written notice to property owner(s) owning property assessed herein, as required by law.

SECTION 3. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **4th day of May, 2010.**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form

Gary E. Rebenstorf, Director of Law

____ Published in the Wichita Eagle on May 7, 2010

ORDINANCE NO. 48-731

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR
THE REMOVAL OF CERTAIN STRUCTURES, BEING DANGEROUS AND
UNSAFE BUILDINGS WHICH HAVE BEEN DECLARED A NUISANCE
(**BUILDING CONDEMNATION-DEMOLITION**) UNDER THE
PROVISION OF SECTIONS 18.16.010 TO 18.16.090 OF THE CODE OF THE
CITY OF WICHITA, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF
WICHITA, KANSAS:

SECTION 1. That the sum set opposite the following lots, herein specified, be and the same is hereby levied to pay the cost of removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance under the provisions of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, located and situated upon the following described property:

DATE: 04/07/10

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
LOTS 30-32-34 WICHITA ST. FITZGERALD'S 2ND. ADD.	373.92
LOTS 80-82 RIDDELL NOW SPRUCE ST. STOUT'S ADD.	373.92
LOTS 6-8 VOLUTSIA AVE. WOODRIDGE PLACE ADD.	367.50
LOTS 6-8 VOLUTSIA AVE. WOODRIDGE PLACE ADD.	373.92
BEG 131.6 FT N & 196 FT W SE COR NW 1/4 SW 1/4 N 131.6 FT W 135 FT S 131.6 FT E 135 FT TO BEG EXC S	367.50

50.6 FT THEREOF SEC 26-27-1E	
LOT 10 BLOCK 4 BEVERLY MANOR ADD.	373.92
LOT 10 BLOCK 4 BEVERLY MANOR ADD.	367.50

SECTION 2. The sum so assessed and apportioned against the lots herein before set out and not paid within 30 days from date of notice sent out by the Debt Management Office of the Department of Finance as provided by law, shall be collected by special assessment upon the property liable therefore in one installment and placed upon the tax roll for the year **2010** and shall be certified to the County Clerk and shall be levied and collected in the same manner as other taxes, and the Debt Management Office of the Department of Finance is hereby directed to give written notice to property owner(s) owning property assessed herein, as required by law.

SECTION 3. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **4th day of May, 2010**.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
April 27, 2010

TO: Mayor and City Council

SUBJECT: Grant Application for Kansas Emergency Shelter Grant Funds (All Districts)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the application for Kansas Emergency Shelter Grant funds, and authorize necessary signatures for the application and subsequent grant award.

Background: The State of Kansas receives Emergency Shelter Grant (ESG) funds under the McKinney-Vento Homeless Assistance Act. These funds are awarded to local government agencies throughout the state on behalf of homeless service providers. Awards are based on statewide competition. In the past, the City of Wichita has applied for and received emergency shelter grants from the Kansas state program on behalf of local providers, in addition to the City's ESG direct allocation from the U.S. Department of Housing and Urban Development (HUD).

The Kansas Housing Resources Corporation (KHRC) is soliciting applications for the Kansas Emergency Shelter Grant (KESG). One homeless service provider in Wichita has submitted a request to the City for the 2010 KESG application. This project will be evaluated by the KHRC for funding awards, against projects submitted by other local government agencies in the state.

Analysis: The City of Wichita grant application includes an application from the Center of Hope for \$7,000 for homeless prevention (assistance with rent).

Goal Impact: Enhance the Quality of Life and Provide Economic Vitality and Affordable Living.

Financial Considerations: The total amount of the request is \$7,000; Center of Hope will provide the required match through cash contributions and donations. No City funds will be required.

Legal Considerations: None. If the State approves this application, a contract will be executed with the Center of Hope.

Recommendations/Actions: It is recommended that the City Council approve the application for Kansas Emergency Shelter Grant funds, and authorize necessary signatures for the application and subsequent grant award.

Attachments: Grant Application.

EMERGENCY SHELTER GRANT APPLICATION 2010

Instructions: Please complete all sections of the Emergency Shelter Grant (ESG) application.

Note: For FY2010, The preference for ESG funding will be for Non-Entitlements.

SECTION I: APPLICANT INFORMATION (Local Units of Government Only)

A. Applicant Information

Local Government City of Wichita, Kansas

Authorized Representative Tiffanie Johnson Title Management Analyst

Address 332 N. Riverview City Wichita

State KS Zip 67203 Federal I.D. Number 46-6000653

Contact to whom questions about this application should be directed: Tiffanie Johnson

Telephone (316) 462-3722 Fax (316) 462-3719

E-mail Address tjohnson@wichita.gov

Sub Recipient Agency	Rehabilitation	Operations	Essential Services	Homeless Prevention	Totals
Center of Hope	\$0.00	\$0.00	\$0.00	\$7,000	\$7,000.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sub Totals	\$0.00	\$0.00	\$0.00	\$7,000.00	\$7,000.00

B. Purpose of Request (Check all that apply.)

- ☐ Bring building up to health and safety codes.
- ☐ Make or improve facility accessibility.
- ☐ Increase beds for homeless people by ____ (number).
- ☐ Expand or maintain the number of homeless individuals or families served.
- ☐ Increase or maintain essential services.
- ☒ Provide homeless prevention services.
- ☐ Other (Specify):

Certification: To the best of my knowledge and belief, the data in this application are true and correct. This document has been duly authorized by the governing body of the applicant. The applicant will comply with federal and state regulations if assistance is approved.

Signature _____
Mayor, City of Wichita
Title (Chief Elected Official)

_____ Date

KANSAS HOUSING
RESOURCES CORPORATION

**CERTIFICATION OF LOCAL APPROVAL
FOR NONPROFIT ORGANIZATIONS**

I, Carl Brewer, Mayor (*name and title*), duly authorized to act on behalf
of the City of Wichita (*name of jurisdiction*),
hereby approve the following project(s) proposed by Center of Hope
[name(s) of jurisdiction(s)].

By: Carl Brewer
Name of Local Government Official

Signature

Date

Mayor, City of Wichita
Title

KANSAS HOUSING RESOURCES CORPORATION

LOCAL UNIT OF GOVERNMENT EMERGENCY SHELTER GRANT PROGRAM FY2010 CERTIFICATIONS

I, Carl Brewer, Mayor (*name and title*), authorized to act on behalf of City of Wichita (*local unit of government*), certify that the local unit of government will ensure compliance by units of general local government and nonprofit organizations to which it distributes funds under the Emergency Shelter Grant Program with:

- (1) The requirements of 24 CFR 576.21(a)(4), which provide that the funding of homeless prevention activities for families that have received eviction notices or notices of termination of utility services meet the following standards: (A) that the inability of the family to make the required payments must be the result of a sudden reduction in income; (B) that the assistance must be necessary to avoid eviction of the family or termination of the services to the family; (C) that there must be a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and (D) that the assistance must not supplant funding for pre-existing homeless prevention activities from any other source.
- (2) The requirements of 24 CFR 576.25(b)(2) concerning the submission by nonprofit organizations applying for funding of a certification of approval of the proposed project(s) from the unit of local government in which the proposed project is located.
- (3) The requirements of 24 CFR 576.53 concerning the continued use of buildings for which Emergency Shelter Grant funds are used for rehabilitation or conversion of buildings for use as emergency shelters for the homeless; or when funds are used solely for operating costs or essential services, concerning the population to be served.
- (4) The building standards requirement of 24 CFR 576.55.
- (5) The requirements of 24 CFR 576.56, concerning assistance to the homeless.
- (6) The requirements of 24 CFR 576.57, other appropriate provisions of 24 CFR Part 576, and other applicable Federal law concerning nondiscrimination and equal opportunity.
- (7) The requirements of 24 CFR 576.59(b) concerning the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- (8) The requirements of 24 CFR 576.59 concerning minimizing the displacement of persons as a result of a project assisted with these funds.
- (9) The requirements of 24 CFR 576.65(a) and 576.65(b) that grantees develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the Emergency Shelter Grant Program and that the address or location of any family violence shelter project assisted with ESG funds will not be made public, except with written authorization of the person or persons responsible for the operation of the shelter.

- (10) The requirement that recipients involve, to the maximum extent practicable, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities as provided by 24 CFR 576.56(b)(2).
- (11) The new requirement of the McKinney Act (42 USC 11362) to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. I further understand that State and local governments are primarily responsible for the care of these individuals, and that ESG funds are not to be used to assist such persons in place of State and local resources.

I certify that the local unit of government will comply with the requirements of 24 CFR Part 24 concerning the Drug-Free Workplace Act of 1988.

I certify that the local unit of government will comply with the provisions of, and regulations and procedures applicable under 24 CFR 576.57(e) with respect to the environmental review responsibilities under the National Environmental Policy Act of 1969 and related authorities as specified in 24 CFR Part 58 as applicable to activities of nonprofit organizations funded directly by the State. The local unit of government also agrees to assume the Department's responsibility and authority as set forth in 24 CFR 576.57(e) for acting on the environmental certifications and requests for the release of funds submitted to the State by local government recipients.

I certify that the local unit of government will ensure the provision of the matching funds required by 24 CFR 576.51 and 42 USC 11375, including a description of the sources and amounts of such supplemental funds, as provided by the State, units of general local government or nonprofit organizations.

Name and Title:

Signature (Chief Elected Official)

Date

Mayor, City of Wichita

Title

Second Reading Ordinances for April 27, 2010 (first read on April 20, 2010)

Public Hearing and Issuance of Industrial Revenue Bonds, LDF Properties, LLC. (District II)

ORDINANCE NO. 48-722

An Ordinance authorizing the City of Wichita, Kansas, to issue its Industrial Revenue Bonds, Series i, 2010 (LDF Properties, LLC) (taxable under federal law), in the aggregate principal amount of \$6,575,000 for the purpose of acquiring, constructing, improving, furnishing and equipping improvements and additions to certain existing facilities located in the City of Wichita, Kansas; prescribing the form and authorizing execution of a first supplemental trust indenture by and between the City and Security Bank of Kansas City, Kansas City, Kansas, as trustee with respect to the bonds; first supplemental lease agreement by and between LDF Properties, LLC and the City; approving the form of a guaranty agreement; and authorizing the execution of a bond purchase agreement by and between the City and LDF Properties, LLC, as purchaser of the bonds.

Public Hearing and Issuance of Industrial Revenue Bonds, Warren IMAX Theatre Project. (District V)

ORDINANCE NO. 48-723

An Ordinance authorizing the City of Wichita, Kansas to issue its taxable Industrial Revenue Bonds, Series ii, 2010 (American Luxury Cinemas, Inc.), in the aggregate principal amount of not to exceed \$16,000,000 for the purpose of constructing, acquiring and equipping a commercial facility; and authorizing the execution of certain documents in connection with the issuance of the bonds.

Replace of Drainage Structure at 31st Street South and Glenn. (District III)

ORDINANCE NO. 48-724

An ordinance declaring the intersection of 31st Street South and Glenn (472-84896) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same.

Arts and Cultural Services Classifications.

ORDINANCE NO. 48-725

An ordinance establishing position classifications for exempt employees of the City of Wichita and prescribing pay rates by reference to position classifications in the schedule of pay ranges repealing Ordinance No. 48-586.

ZON2010-00005 Associated with CON2010-00009- Request City zone change from GC General Commercial to LI Limited Industrial and City Conditional Use for wrecking and salvage: generally located north of MacArthur Road and 3,000 feet east of Broadway Street, 1100 East MacArthur Road. (District III)

ORDINANCE NO. 48-726

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

Approval of Economic Development Incentives, Spartech, Inc. (District V)

ORDINANCE NO. 48-727

An Ordinance of the City of Wichita, Kansas, prescribing the form and authorizing the execution of a forgivable loan agreement and promissory note by and between Spartech Corporation and the City of Wichita, Kansas.